

RESEARCH:

Transparency gaps and milestones of funds allocated and utilised for COVID-19 response and recovery in Kenya





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Abbreviations and Acronyms

CAJ	Commission on Administrative Justice
CBROP	County Budget Review and Outlook Paper
CFSP	County Fiscal Strategy Paper
FGDs	Focus Group Discussions
ICJ	International Commission of Jurists
IEA	Institute of Economic Affairs
IEC	Information, Education and Communication
IFMIS	Integrated Financial Management Information System
IDS	Institute for Development Studies
IIAG	Mo Ibrahim Index of African Governance
KII	Key Informant Interview
KEMSA	Kenya Medical Supplies Agency
KEMRI	Kenya Medical Research Institute
LDRI	Local Development Research Institute
MoH	Ministry of Health
O4C19	Openness for COVID- 19
OCDS	Open Contracting Data Standard
OGP	Open Government Partnership
PPE	Personal Protective Equipment
PFM	Public Finance Management
PPIP	Public Procurement Information Portal
PPRA	Public Procurement Regulatory Authority
PPDA	Public Procurement and Assets Disposal Act
REB	Regional Economic Blocs

Executive Summary

The overall purpose of the national baseline research was to document the on-going efforts, needs, existing barriers and gaps in publishing and monitoring of COVID-19 related funds i.e allocations and utilization and how this impacts transparent and efficient use of public resources and access to services by citizens and produce evidence-based recommendations. In particular, the aim of the research was to determine the project baseline data by addressing questions on; institutional arrangement, legal and policy context, technical framework, stakeholders, citizen engagement, responsiveness and service delivery access and use of COVID 19 information, capacity development.

A multi-dimensional national baseline research approach utilizing qualitative and quantitative methodologies was adopted and included; document review, Key Informant Interviews (KIs) and Focus Group Discussions (FGD). The Probability Proportion to Size sampling technique was used to sample community members to participate in the national baseline research while purposive sampling was used for infomediaries who participated in the survey. Purposive sampling was further used for marginalized community groups that participated in the FGDs, Hivos staff, county and national government officials and NGO representatives that participated in the KIs. Stakeholder lists were provided by Hivos to aid the process of sampling by the research consultants.

The total number of interviews conducted includes 463 community members/citizens (252 females; 208 males; 2 intersex; 1 nonbinary) who were subjected to community survey questionnaire in seven counties¹. 29 organizations were subjected to an infomediary survey questionnaire, 18 FGDs with marginalized community members, 37 KIs of; staff, NGO partners, donors and other stakeholders (county officials, PPRA, CAJ, and NGEK)

The research found that the *institutional*

¹ Garissa, Turkana, Kwale, Makueni, Nyandarua, Vihiga & Nairobi

arrangements for management, publishing and monitoring of funds allocated and utilized for Covid 19 response and recovery cuts across multiple and diverse institutions at national and county levels. These include: National Emergency Response Committee (NERC) on Coronavirus as the core entity for coordination at national level, Ministry of Health, National Treasury, The Office of the Controller of Budget (CoB), Auditor General, Public Procurement Regulatory Authority (PPRA), Ethics and Anti-Corruption Commission (EACC), Parliament, County Governments and Council of Governors (COG).

With regard to the *legal and policy context*, the research found that Public Procurement and Assets Disposal (PPAD) Act does not have clear and specific guidelines on how to conduct emergency contracting and procurement. In particular, regulations on the duration of direct procurement and retrospective approvals during emergency procurement; Inadequate legal provisions on reporting and publication of emergency contracting information- particularly on tenders and contracts awards; as well as lack of clear provisions for citizen engagement in emergency contracting. The public finance management laws do not mandate the National Treasury to arrange for *effective* public participation during the planning and development annual budget estimates including the publication of citizens' budgets. The research found that there were only 27 counties that had enacted emergency and disaster frameworks. A number of gaps exist in the county emergency funds legislations which limit the publishing and monitoring of COVID-19 related funds allocations and utilization. These include; the absence of public oversight mechanisms for the emergency and disaster funds, lack of adequate provisions for emergency contracting and the lack of provisions for publication of non-financial data. Currently there was no national law on public participation. There were only 22 counties with Public Participation Acts. Access to Information Act, 2016 makes provisions for proactive

disclosure and access to information. The major gaps relate to; the lack of regulations to guide the manner and form on which requests to access information held by government institutions can be made, and the measures to be taken by government institutions to facilitate access to the information, broad scope of exceptions which undermines the effectiveness of access to information on emergency contracting, budgets and audit by citizens, absence of legal powers for CAJ to make binding recommendations where there has been an infringement of any of the provisions of the Act.

On *policy*, the research found that Kenya has put into place some policies and made commitments that advance transparency and accountability on management of Covid-19 funds notably the Executive Order No. 2 Of 2018 on Procurement of Public Goods, Works and Services by Public Entities and County COVID-19 Social – Economic Reengineering and Recovery Strategy 2020/21–2022/23 and the Open Government Partnership National Action Plan IV. At sub-national level, the research found that Elgeyo Marakwet, Makueni, Nandi, Nairobi and Vihiga have taken key practical steps to realize the commitments on open data and open contracting. Elgeyo Marakwet and Makueni County Governments have successfully rolled out the Open Contracting Portals that are compliant with the Open Contracting Data Standard. The portals collect and publish emergency contracting information which is accessible to the public. However, civil society and the public within the two counties still lack adequate capacity to re-use the data published by the portals. Nandi County has developed an OGP Sub National Action Plan and an implementation framework. The OGP team within the county was open for partnerships with stakeholders to implement the plan. Vihiga County was one of the implementation partners of the Kenya OGP National Action Plans commitments on Open Geo Spatial Data for Development and open data for development. However, the county is yet to develop an action plan.

With regard to the *technical frameworks*, the research found that compliance with the procurement reporting and publishing requirements was low, especially non registration with PPIP as well as reporting on Covid-19 response and recovery contract awards. Only

12% of counties registered with PPIP reported on contract datasets related to COVID 19 funds. On reporting and publishing of budgets, debts and related instruments by counties, findings show that most counties (89%) published information related CFSP, followed by Annual Development Plan (85%) and Annual Budgets (80%) while 68% of the counties published information on CBROP. Further, only 26% of the counties published information on procurement plans and debt management plans and only 43% published information on budget implementation reports. Further 51% of the counties published information on citizen budgets.

The research found that whereas there was reasonable *freedom to access information* related to COVID 19 emergency contracting, budgets and audits across all sampled counties (88%), timeliness of the information published by counties was limited except for Vihiga County (67%). Also, accessibility by infomediaries to quality information on emergency contracting, budgets and audits produced by government institutions was below average (38%). Notably, access to information on COVID 19 emergency contracting, budgets and audits from government institutions is not significantly influenced by factors such as sex.

Citizen engagement in COVID 19 funds allocation and use (specifically on emergency contracting and budgets) across counties is still very limited. Vihiga County had the highest percentage of respondents (97%) who reported that the sub-national government did not consult them followed by Kwale County (93%) and Garissa County (68%). There were more females than males that were consulted by the County Governments in the allocation and utilization of funds across all the sampled 7 counties. Some of the challenges that women face include lack of specific mechanisms to address the increased cases of gender based violence at county level, inadequate involvement in budget planning and implementation, lack of transparency in food distribution and cash transfers programmes, difficulties in accessing information. The major concerns among the youth and PLWDs were that the existing mechanisms for engagement at the county level were inadequate and there are no transparent mechanisms to access benefits from AGPO. Similarly citizen engagement by infomediaries was limited (46%).

In relation to the quality of services offered by county governments in light of COVID 19 crisis, majority of citizens in counties surveyed were dissatisfied with service delivery. Also, number of public complaints were experienced with Nairobi County recording the highest number (34%) while Vihiga County the least (4.8%). The nature of complaints were specifically on; lack of information regarding COVID 19 resource allocation and utilization (44%), misappropriation of funds through irregular procurement (37%) and the fact that COVID 19 resources released by the governments did not reach the main beneficiaries (32%). Majority of complaints that were raised by citizens (75%) were not addressed appropriately by the relevant duty bearers.

The research established that majority of the informediaries (66%) are involved in initiatives for advancing transparency and efficient use

of public resources and access to services related to COVID 19 response and recovery, mostly undertaking advocacy work on better geared towards better allocation and utilization of COVID 19 resources. However, capacity challenges exist among informediaries with a majority of the informediaries (62%) indicating that they are not adequately equipped with knowledge and skills on open contracting while (31%) indicated that they had the capacity.

Key intermediary capacity priority areas were found to be around advocacy and networking on COVID 19 response and recovery (48%) and monitoring and oversight of COVID 19 public funds allocation and use (24%). Majority preferred that these capacity gaps be addressed through training or mentorship (44%) or through additional funding (38%).

A number of key recommendations were drawn from the national baseline research including:

- O4C19 Project should provide technical assistance to selected counties to strengthen implementation of the emergency open contracting, including the development of a public-facing web portal based on Open Contracting Data Standard (OCDS). Specifically, Nandi and or Vihiga counties to develop capacity of staff – procurement staff and technical staff to understand open government. Also, partner with Makueni County to support the enactment of the County Open Contracting Bill, 2020 and the Open Contracting Policy. In addition, support capacity development of stakeholders involved in emergency contracting, specifically how to deal with emergencies. Support civic education and awareness on budget process. Partner with Elgeyo County executive to create awareness on the new OC portal. This will include training the public, civil society, ward development committees, leadership of county assemblies
- Support counties to develop citizen engagement platforms that will provide a framework to accelerate the resolution of public's complaints and implement civic education campaign to sensitize the public on the existence and use of the platforms.

Key recommendations:

- The O4C19 project should work with PPRA on:
 - The development of guidelines for retroactive procurement approval undertaken to deal with emergency needs under section 69 of the Public Procurement and Disposal Act.
 - The development of guidelines for direct procurement for urgent needs or emergency procurement under section 103 of the Public Procurement and Asset Disposal Act.
 - Inclusion in the PPIP of evaluation reports including information on technical and financial capacity of the awarded bidders, current market price of specific goods, works and services
 - Inclusion of county and national procurement plans for public access in the PPIP
- The O4C19 Project should design and undertake capacity development and sensitization of counties that have not commenced procurement reporting in the PPIP in order to register and upload procurement information in the PPIP as required by the law
- The O4C19 Project should engage and support counties with capacity building and sensitization of counties to upload all budgets and related instruments in their websites, and to continuously update them.
- Design an advocacy campaign aimed at strengthening publication of information on COVID-19 related funds allocations and utilization. Specific campaign actions on legal reform should consider advocacy for enactment and implementation of the following:
 - Partner with PPRA to develop specific regulations on how to conduct emergency contracting and procurement.
 - Develop specific regulations on how to make supplementary budget making more open to the public.
 - The enactment of Access to Information (General) Regulations, 2021.

Key recommendations:

- Enactment of national Public Participation law to institutionalize citizen engagement process at all levels
- Petition Parliament to amend the Access to Information Act and amendment of existing provisions to make recommendations of the CAJ binding so that court action can ensue where public officials do not comply with the ATI laws
- Legal reform to enhance citizen participation on oversight of emergency contracting
- Develop capacity building programme in collaboration with CAJ on access to information across county governments and other public institutions
- Develop the capacity of infomediaries at county level in advocacy and networking, monitoring and oversight of COVID 19 funds.
- Counties should formulate regulations under Emergency/ Disaster Acts to provide for guidelines for establishment of community oversight mechanisms; formulate county specific guidelines on emergency contracting; make guidelines for publishing non-financial reports linked with the financial reports; formulate access to information laws and guidelines/ regulations.
- Parliament should review the exceptions in the Access to Information Act to make them limited and specific and strengthen the enforcement powers of the CAJ.

1.0 Introduction

1.1 Background information

Kenya has progressively adopted policy, legal, institutional and administrative measures for transparency, public participation and accountability in public finance management. The Constitution of Kenya sets out the framework for accountability, transparency, good governance and prudence in management of public funds, as well as principle laws governing public funds management such as the Public Finance Management Act, No. 18 of 2012; Public Procurement and Disposal Act, No. 33 of 2015; Public Audit Act, No. 34 of 2015 and Controller of Budget Act, No. 26 of 2016. In regard to access to information, the Access to Information Act, No. 31 of 2016 provides for the framework for public access to government information such as public funds management.

Kenya has been a member of Open Government Partnership (OGP) since 2011. Open Government Partnership is “a global partnership that brings together government reformers and civil

society leaders to create action plans that make governments more inclusive, responsive and accountable”. In order to promote transparency and accountability, Kenya has, since 2011 adopted the Access to Information Act, No. 31 of 2016 ; the Bribery Act, No. 47 of 2016; and the Executive Order No. 2 of 2018 on Procurement of Goods, Works and Services by Public Entities among others. Through its commitments under OGP, Kenya has adopted regulatory requirements for beneficial ownership disclosures for companies; commitment to open contracting, especially implementation of Open Contracting Data Standard (OCDS).

In terms of transparency and accountability, Kenya is ranked number 49 with a score of 50 out of 100 in terms of open budget index, which implies that the budget information provided to the public or published is limited and insufficient (41–60) .

1.2 Objectives of national baseline survey

The national baseline research was guided by the following objectives:

1 To establish on-going efforts, needs, existing barriers and gaps in publishing and monitoring of COVID-19 related funds allocations and utilization and how this impacts transparent and efficient use of public resources and access to services by citizens.

2 To undertake a mapping, assessment and prioritization of counties where the O4C19 project will be implemented.

1.3 Scope of the research

Based on the objectives of the study, the research addressed several research questions framed under the thematic areas, which included analysis of; institutional arrangements, legal & policy framework; technical framework; stakeholders & citizen engagement; capacity development; government responsiveness and access to information.

The mapping, assessment and prioritization

of counties where the O4C19 project will be implemented was analysed based on a typology that included; counties with highest funds allocated for COVID-19, counties with lowest budget allocation, highest expenditure, level of corruption and mismanagement of COVID-19 funds, and commitment to open data, open contracting approaches, and open governance – counties publishing information, budgets/ demonstrating openness.

2.0 Baseline Survey Methodology

This section provides the process and methods adopted in collection of data and preparation of the baseline survey report. The study employed a multi-dimensional approach using both secondary and primary methods of data collection as discussed below:

2.1 Qualitative methodology

Review of O4C19 project documents

In order for the research team to get acquainted with the context and intervention strategy underpinning the project, the research team began with a review of pertinent documents. These included the O4C19 project proposal, log-frame, Hivos project background reports, reports generated by government agencies such as Public Procurement Regulatory Authority (PPRA), National Treasury, Parliament, Auditor-General and Controller of Budget, legislations, county

websites, relevant studies conducted in the context information publishing and monitoring of COVID-19 related funds allocations and utilization and reports submitted by partners and stakeholders for review.

The documents' review was critical to providing information on the key issues, stakeholders involved while also detailing some of the pertinent factors relevant to the implementation strategy of the O4C19 project.

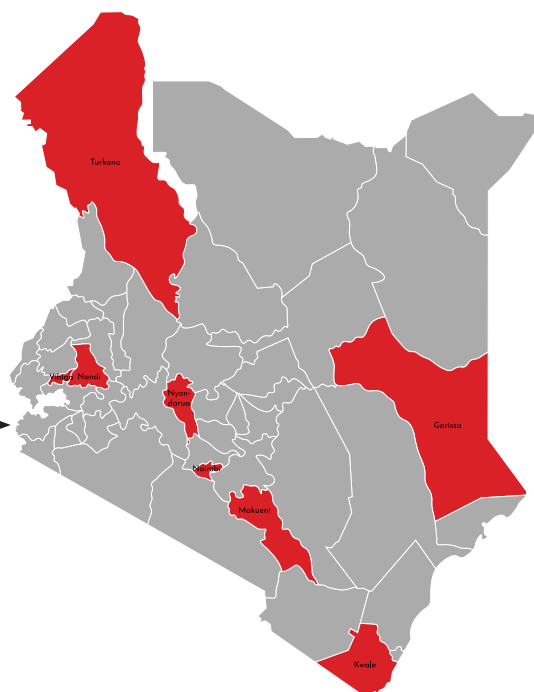
County typology and ranking analysis

Following the documents review, a high level data mining and analysis of counties was undertaken based on the following factors:

- Counties with highest funds allocated for COVID-19
- Counties with lowest budget allocation
- Highest expenditure counties
- Level of corruption and mismanagement of COVID-19 funds
- Commitment to open data, open contracting approaches
- Open governance – counties publishing information, budgets /demonstrating openness

From the analysis and further considerations, the research team concluded that following counties offered potential for further study; Nairobi, Nyandarua, Nandi, Kilifi, Kwale, Makueni and Turkana, Elgeyo Marakwet, Laikipia, Nyeri, Kakamega, West Pokot, Trans Nzoia and Garissa². Specifically, the following 8 counties were finally chosen for indepth study at the primary research stage;

- Nairobi,
- Nyandarua
- Vihiga
- Kwale
- Makueni
- Turkana
- Garissa
- Nandi



² Hivos, Openness 4 Covid-19 Response & Recovery in Kenya (O4C19) Revised Inception Report for Baseline Study, 26th July 2021; Also, O4C19 Project National Baseline Research, First Draft Report on Secondary /Desk Research with Analysis and Preliminary Findings, September 2021

The basis of their selection was:

- Their commitments and involvement in open contracting commitment, which presents the basis for assessment of the extent to which accountability and determines monitoring of the funds have been, extended to COVID-19 funds management and future engagement.
- Their high level of openness presenting opportunities for further research and project engagement
- They were among the highest and/or had significant COVID-19 funds allocations during the two financial years, with Turkana and Nairobi counties being among the top ten counties during the two financial years, and Kwale county being in the top ten during FY 2020/2021
- They relatively had low funds absorption rates, which presents a good case for analysis of accountability and stakeholder engagement in the public funds management.

Considering that the O4C19 project was envisaged to be implemented in atleast three (3) counties, the county typology and ranking analysis was useful not only in offering the potential counties for the study sample but also possible counties where the project could be implemented with impact.

Focus Group Discussions

The study held 18 Focus Group Discussions (FGDs) with groups of 5-8 members of marginalized and socially excluded categories of women, youth, persons living with disabilities and indigenous communities (Turkana elders) from the sub-counties. FGD guides (developed in consultation with Hivos team) were used to guide discussions that were moderated by trained and experienced moderators. The scripts from the respective FGDs were captured in English without changing meaning.

Key Informant Interviews

A total of 37 online Key Informant Interviews (KIIs) were conducted. Participants were officials from O4C19 project implementation team and Hivos staff, NGO partners, donors and government stakeholders (county officials, Public Procurement and Regulatory Authority-PPRA& Commission on Administrative Justice-CAJ) (A list of key informants is provided in Appendix I). Purposive sampling technique was applied to identify the participants. The interviews were conducted to establish their

interventions and obtain perspectives on major policy, legal and technical questions related to access to information, publishing and oversight of COVID-19 related funds allocations and utilization; including issues around transparency and efficiency in public resource management and access to services. The interviews were either individual or group depending on the preference and set-up of the organization. The

interview process made use of a semi-structured interview guide developed in consultation with Hivos team. Data obtained from KIIs and FGDs was organized according to the thematic areas of legal, policy and institutions, citizen engagement, capacity, stakeholders and voice of marginalized and socially excluded groups. Informative perceptions and opinions were used to explain some of the quantitative findings.

2.2 Quantitative data collection methodology

The quantitative aspect of the research captured the perceptions of citizens through administration of a structured questionnaire. The questionnaire was developed in consultation with Hivos team. The main themes captured in the questionnaire were; access to information related to COVID 19 fund allocation and utilization, government responsiveness and service delivery in light of COVID 19 response and recovery, citizen engagement as well as capacity development in accordance with the research objective and in line with the O4C19 project key result areas.

The questionnaire was administered among the 463 respondents (252 females, 208 males, 2 Intersex, 1Nonbinary) all adults. Sex disaggregation being one of the requirements for the O4C19 project, representation by sex (used herein interchangeably with term 'Gender') was considered during the sample selection. The research teams purposively identified females and males to be interviewed to get a fair representation of the two.

2.3 Sampling approach

The sampling approach was guided by several statistical techniques as was reflected in the inception report³. The population figures used to arrive to the final sample size was extracted from 2019 Kenya Population and Housing Census report. The following steps were followed in the sample section process.

County and sub county sampling and their populations

The counties identified from the county typology and ranking analysis i.e. Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa were mapped to represent each of the 6 Regional Economic Blocs (REBs) with the exception of Nairobi as classified by the Ministry of Devolution and the Arid and Semi-Arid Lands and the Presidential directive on

regional economic blocs⁴. The RECs include; Frontier Counties Development Council (FCDC), North Rift Economic Bloc (NOREB), Lake Region Economic Bloc (LREB), Jumuia ya Kaunti za Pwani, South Eastern Kenya Economic Bloc and the Mt. Kenya and Aberdares Region Economic Bloc⁵. Nairobi County is not part of the REBs.

To ensure a fair representation from people of different social economic characteristics, the sub counties in the sampled counties were to the extent possible categorized into urban and rural and in each case one sub-county was randomly sampled. Table1 below provides the sampled counties; sub-counties and total population segregated by gender for the areas where the primary data collection was to be conducted.

³ Hivos, Openness 4 Covid-19 Response & Recovery in Kenya (O4C19) Revised Inception Report for Baseline Study, 26th July 2021

⁴ Counties have formed regional economic blocs largely due to their historical, political and economic similarities. See <https://www.devolution.go.ke/regional-economic-blocs/>

⁵ See <https://www.devolution.go.ke/regional-economic-blocs/>; <https://www.president.go.ke/2018/10/22/president-kenyatta-endorses-county-regional-blocs-to-spur-development/>

Table 1: Sampled counties, sub-counties and population

County	Male	Female	Total	Sub county	Male	Female	Total
Nairobi	2,192,452	2,204,376	4,396,828	Starehe	109,173	101,238	210,411
				Westlands	153,818	155,021	308,839
Nyandarua	315,022	323,247	638,269	Kinangop	54,727	56,679	111,406
				Kipipiri	46,113	47,740	93,855
Vihiga	283,678	306,323	590,001	Luanda	51,525	55,165	106,690
				Emuhaya	46,507	50,633	97,140
Kwale	425,121	441,681	866,802	Matuga	95,831	98,419	194,252
				Msambweni	89,206	88,480	177,686
Makueni	489,691	497,942	987,633	Makueni	65,418	64,955	130,373
				Kibwezi	98,477	98,517	196,994
Turkana	478,087	478,087	956,174	Turkana Central	93,145	92,160	185,305
				Loima	54,341	53,453	107,795
Garissa	458,975	382,344	841,319	Garissa	83,460	80,449	163,909
				Fafi	72,617	61,413	134,040
Overall Total			9,277,026				

Source: 2019 Kenya Population and Housing Census report

Sample size determination

The total number of individuals from the community to be sampled was drawn using the Probability Proportion to Size sampling technique provided below;

$$n = \frac{N}{1 + N(e^2)} + U$$

Where;

n= Total sample size of the survey

e=0.05 (5%) is the desired 95% level of precision

N= Total population of Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa which is 9,277,0262, as reflected in table 1 above.

U= Acceptable margin error of more 10% for respondents who the study would not be able to reach.

Using the formula above, the total sample size selected from the total population was 400 respondents.

County sample selection

Given that sampled counties had varying population sizes (table 1), stratified with proportion allocation sampling was employed to arrive to the sample size per selected county as reflected in the formula below.

Formula of stratified sampling with proportional allocation

$$n_h = \frac{N_h}{N} n$$

Where;

n_h = the sub-sample size of the h^{th} stratum (Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa)

n= the total sample selected from the population size of Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa (n=400)

N_k = the population size of the k^{th} stratum (Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa)

N is the population size of Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa (N=9, 277, 0262)

To ensure representation by sex, the study used percentage proportions to apportion the sample according to gender. This was guided by the following formula;

$$n_g = \left(\frac{n_i}{N_k} \right) * n_h$$

n_g = gender based county sample size selected

n_i = county population size segregated by gender

N_k = the population size of the k^{th} stratum (Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa)

n_h = the sub-sample size of the h^{th} stratum (Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa)

The table 2 below shows the county and sub county sample sizes that was sampled distributed according to gender.

Table 2: county and sub county sample by sex

Counties	Male	Female	Total	Sub county	Male	Female	Total
Nairobi	95	95	190	Starehe	49	46	95
				Westlands	47	48	95
Nyandarua	14	14	28	Kinangop	7	7	14
				Kipipiri	7	7	14
Vihiga	12	13	25	Luanda	6	7	13
				Emuhaya	6	7	13
Kwale	18	19	37	Matuga	9	10	19
				Msambweni	9	9	19
Makueni	21	21	43	Makueni	11	11	21
				Kibwezi	11	11	21
Turkana	21	21	41	Turkana Central	10	10	21
				Loima	11	10	21
Garissa	20	16	36	Garissa	10	8	18
				Fafi	11	8	18
Overall total			400		202	198	400

Additionally, as reflected in table 2 above, two sub counties were selected in each sampled county and the total number of individuals per sub county proportionally apportioned based on sex in the two sub counties using the formula below;

$$n_s = \left(\frac{N_{xj}}{N_j} \right) * n_g$$

n_s = Sex based sample size selected in s^{th} sampled

sub county.

N_{xj} = Sex based total population of the x^{th} sampled sub county from j^{th} stratum

N_j = Sex based total population of the sampled sub counties in j^{th} stratum (Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa)

n_g = Sex based county sample size selected

2.4 Data collection and interviews conducted

The data collection was coordinated by two research consultants who supervised 8 research assistants in their respective counties of Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa. Data collection was carried out in July and August 2021. The 8 research assistants were recruited and trained for data collection methods, semi-structured interviews with community members (FGDs) and how to administer survey questionnaires. The table below shows respondents reached in each county.

Table 3: county and sub county sample by gender

Counties	Sub county	Male	Female	Total	Total interviewed	Deviation
Nairobi	Starehe	49	46	95	227	37
	Westlands	47	48	95		
Nyandarua	Kinangop	7	7	14	30	2
	Kipipiri	7	7	14		
Vihiga	Luanda	6	7	13	36	10
	Emuhaya	6	7	13		
Kwale	Matuga	9	10	19	42	4
	Msambweni	9	9	19		
Makueni	Makueni	11	11	21	45	3
	Kibwezi	11	11	21		
Turkana	Turkana Central	10	10	21	42	0
	Loima	11	10	21		
Garissa	Garissa	10	8	18	41	5
	Fafi	11	8	18		
Overall total		202	198	400	463	63

A total of 227 (Nairobi), 30 (Nyandarua), 36 (Vihiga) 42 (Kwale), 45 (Makueni), 42 (Turkana) and 41 (Garissa) surveys were successfully conducted in the target sub counties. This made a total of 463 out of 400 planned with a success rate of 116%.

The research had initially planned to collect data in Dadaab in Garissa, Turkana West, Kinango in Kwale and Nyandaura South Sub-counties. However, due to unpredictability of Covid 19 protocols and the large geographical distances between the sub-counties per county identified before commencement of the research, the research team opted to change the sub-county selection with Kipipiri in Nyandarua, Matuga in Kwale, Loima in Turkana and Fafi in Garissa counties respectively.

Data analysis

Data collected from KIIs and FGDs was analysed using qualitative data analysis techniques - thematic analysis and transcription. From the existing documents, a synthesis approach was used. Information obtained from such analysis was vital in leveraging already collected information for use in the final analysis and reporting.

Analysis of the survey data: the data analyst with the supervision of the research consultants coded, entered and analyzed the survey data using the MS Excel and Stata. The processed data was triangulated with the qualitative data for interpretation and used to prepare the report.

2.5 Data management and quality assurance

The research team ensured there was quality by implementing a number of protocols. At the end of each data collection day, the team reviewed the day's experiences, challenges and also undertook regular cleaning of the data comprising of responses received from the research assistants for any missing responses or material errors. A WhatsApp group and

regular check-in with the research assistants was made to capture progress and resolve any challenges. A debriefing session was held with the research assistants to discuss what worked well, what did not work well, lessons learned and recommendations. This enabled different research assistants learn from others to overcome challenges faced in the field.

Further data quality assurance was ensured through:

- Adopting a scientific design and sampling techniques
- Use of standard data collection tools.
- Research assistants were trained on the survey methodology, data collection tools, and interviewing techniques.
- External review and pre-testing of data collection tools followed by cleaning and editing them for any discrepancies before the actual interviews.
- Supervision during data collection was prioritized with well trained research assistants and the consultants' team as the lead.

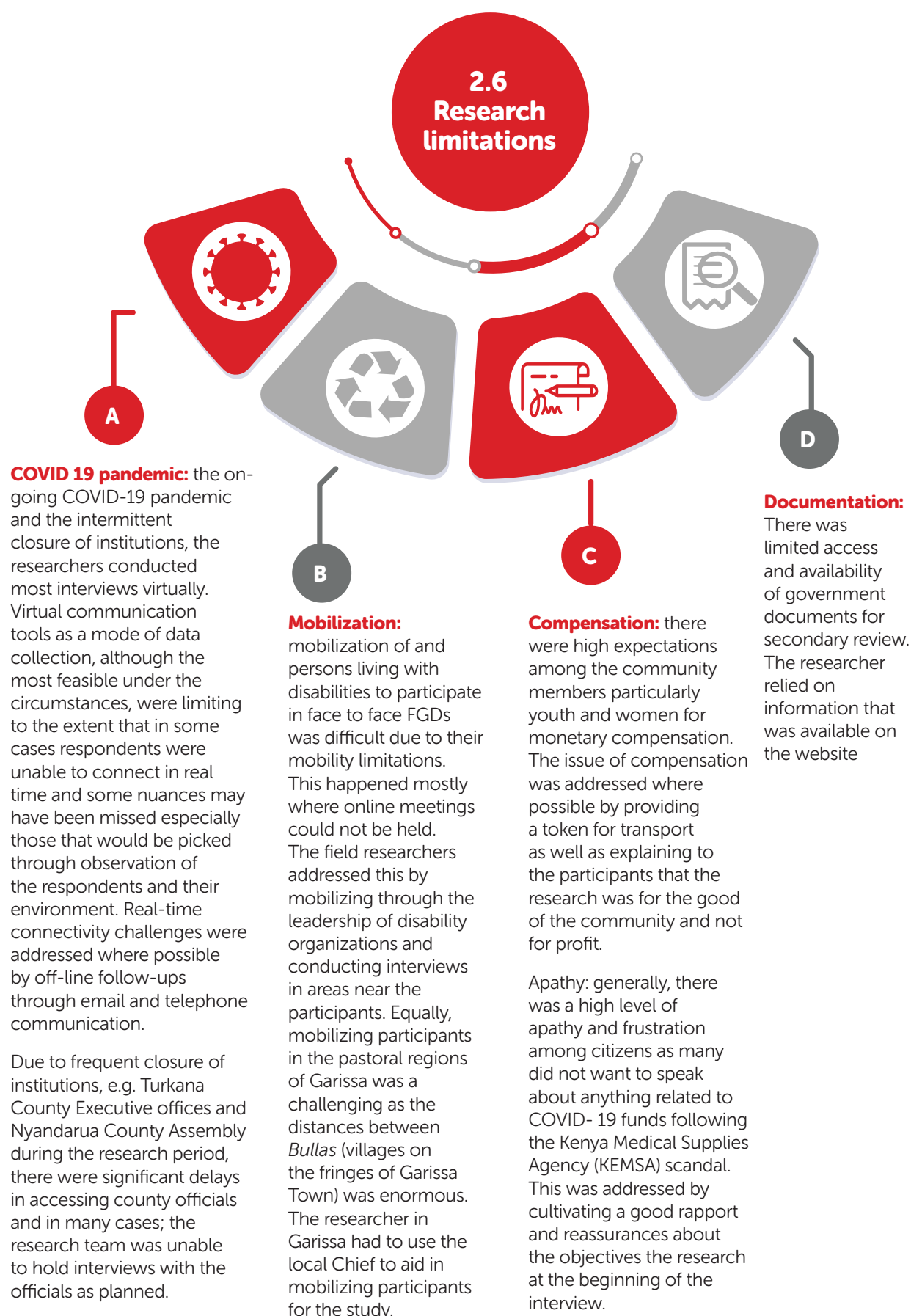
Health and ethical considerations

It's important to note that the research was conducted during the COVID 19 pandemic. As such the following mitigating processes were utilized:

- Use of remote data collection and analysis methods such telephone interviews and Zoom interviews
- Where on-site data collection was held, the research team followed the MOH health guidelines such as observance of hygiene and social distancing. For FGDs session the number of each group was limited to 5 participants wherever possible.

With regard to ethical protocols, the research team observed the following:

- Hivos provided the research team with letter introducing the subject research and the team to partner organizations.
- The research team was responsible for conducting themselves at all times in a professional manner and striving to achieve the highest standards of behaviour, competence, objectivity and integrity during the whole duration.
- The research team sought verbal consent from the respondents before administering data collection tools.
- The consultancy team promoted confidentiality by ensuring that all collected data is not shared anywhere else except for the study purposes.



3.0 Current State: *Qualitative Findings*

3.1 Institutional Arrangement

Management of funds allocated for COVID-19 response and recovery cuts across diverse institutions at national and county levels. The institutions are involved in various public finance management processes related to COVID-19 recovery and response. The key processes considered in this study were budgets, emergency procurement or contracting and oversight (legislative and executive – budget oversight and audits). Below is a review and analysis of the respective institutions, their roles and areas of improvement on management of public emergency funds in terms of allocations and utilization.

National government institutions responsible for budgets (planning, execution, coordination and oversight) and emergency procurement on Covid-19 response and recovery funds

At national level, budgets on COVID-19 response and recovery funds are prepared by the respective public entities charged with undertaking and coordinating COVID-19 response and recovery in accordance with the Public Finance Management Act, No. 18 of 2012. The leading entities are:

National Emergency Response Committee on Coronavirus

The National Emergency Response Committee on Coronavirus (the Committee) was established on 28th February 2020 through Executive Order No. 2 of 2020. The Committee consists of representation from ministries (including respective agencies) of Foreign Affairs; Transport, Infrastructure, Housing, Urban Development and Public Works; Defence; ICT, Innovation, Youth Affairs; Health; Interior and Coordination of National Government; National Treasury; Council of Governors. The Committee is responsible for, among others, the coordinating Kenya's preparedness, prevention and response to the threat of Coronavirus Disease; coordinating capacity building for medical or health professionals; enhancing port surveillance; coordination of supply medical supplies; and development of mitigation strategies in relation to Coronavirus.

The Committee has been responsible for the regular public updates in the status of Coronavirus infections, caseloads and deaths across the country. However, there is limited public information on how the Committee has contributed to management of public funds. The continuous updates on Coronavirus status do not include information on public expenditure on Coronavirus mitigation measures. The assumption would be that the Committee has provided advisory to the ministry of health and relevant government agencies especially on the critical needs to mitigate Coronavirus that require public funding and public intervention.

The Committee has been the core national intergovernmental structure for coordination of COVID-19 response and recovery.

Ministry of Health

The Ministry of Health (MoH) is the main government agency responsible for providing leadership on Coronavirus management and mitigation, specifically on all health matters. The ministry issues the health requirements on prevention and treatment of coronavirus cases. Under the Ministry, there are other agencies that are responsible for budgets on Coronavirus mitigation measures, which include:

Kenya Medical Supplies Agency (KEMSA),

which is the leading government agency for purchase and supply of Coronavirus medical supplies for government hospitals and health facilities. KEMSA is obligated to ensure that there are adequate supplies for all medical supplies and equipment.

Kenya Medical Research Institute (KEMRI),

which leads in medical research. In relation to Coronavirus, KEMRI has been coordinating medical tests and analysis as well as disease surveillance.

Level 6 hospitals

such as Kenyatta National Hospital (KNH) and Moi Teaching and Referral Hospital (MTRH). The hospitals have been the main centres of utilization of coronavirus medical supplies.

The ministry coordinates the National Vaccines Deployment and Vaccination Taskforce, which is responsible for vaccines deployment planning and implementation⁶. The taskforce reports to the National Emergency Response Committee on Coronavirus. The table below describes the composition of the taskforce.⁷

- 6 MoH (2021) a. National Covid-19 Vaccines Deployment Plan, 2021. Available at: <https://www.health.go.ke/wp-content/uploads/2021/09/NATIONAL-COVID-19-VACCINE-DEPLOYMENT-PLAN-2021.pdf>
- 7 MoH (2021) b. National Covid-19 Vaccines Deployment Plan, 2021. Available at: <https://s3-eu-west-1.amazonaws.com/s3.sourceafrica.net/documents/120939/Kenya-Ministry-of-Health-National-COVID-19.pdf>

Table 4: National Covid-19 Vaccine Deployment Vaccination Taskforce

	Name	Position	Role
1	Dr. Willis Akhwale	Disease control specialist/ Senior Advisor MOH	Chair
2	Dr. Pacifica Onyancha	Head, Directorate Preventive and Promotive Health Services	Member
3	Dr. Githinji Gitahi	AMREF	Member
4	Dr. Nazila Ganatra	Head Strategic Public Health Programs	Member
5	Dr. Collins Tabu	Convenor/ Head, Division of National Vaccines, and Immunization Program	Member
6	Mr. Mburugu Gikunda	MoH Advisor, Communications (Task Lead, Advocacy, Communication and Community Mobilization)	Member
7	Mr. Benson Murimi	MoH Kenya, Finance (Task Lead, Vaccine Financing, Costing & Resourcing)	Member
8	Dr. Ayub Many	Task lead- Data management, monitoring and surveillance	Member
9	Dr. Linda Makayotto	MoH, Surveillance	Member
10	Dr. Peter Mbwiri	Pharmacy and Poisons Board	Member
11	Mr. Onesmus Kamau	Data Management	Member
12	Dr. Peter Okoth	Immunization Specialist, UNICEF	Member
13	Dr. Kibet Sergon	WHO	Member
14	Dr. Richard Ayah	University of Nairobi	Member
15	Prof. Bernhards Ogutu	KEMRI	Member
16	Mr. Anthony Ngatia	CHAI	Member
17	Mr. Kenneth Munge	World Bank	Member
18	Edwine Barasa	Kemri Wellcome Trust	Member
19	Dr. Edward Abwao	USP	Member
20	Health Committee, CoG	Representative, Council of Governors	Member
21	Dr. Cosmas Mugambi	MOH	Member
22	Dr. Victoria Kanana	MoH, Secretariat	Member
23	Dr. Stephen Muleshe	MoH (Task Lead, Planning and Member Coordination)	Member
24	Mr. John Kabuchi	MoH, (Task Lead, Procurement and Member Logistics)	Member

The ministry of health received Ksh. 23.4 billion funding from the National Treasury for use in health interventions on COVID-19 response for the financial year 2019/2020 through supplementary budget. The government own source revenue disbursed from the National Treasury was Ksh. 16.7 billion while the amount from external sources was Ksh. 6.7 billion. The funds were to be used by the ministry, its Semi-Autonomous Governmental Agencies (SAGAs) such as KEMSA and KEMRI.

Part of the funding was to implement the COVID-19 Health Emergency Response Project (CHERP), which supports interventions on prevention, response and strengthening national health systems. The project implements 6 components, which include medical supplies and equipment; quarantine, isolation and treatment centres; and medical waste disposal. In relation to publishing and monitoring of public funds related to coronavirus response and recovery, the ministry of health has published in its website the following information:

- Guidelines and protocols on prevention and treatment of Coronavirus cases, which provides for the medical supplies that should be utilized in prevention and management of Coronavirus. All national government health facilities are required to use the protocols as the basis of preparing their budgets and utilizing public funds on health related COVID-19 response and mitigation measures such as procurement of medical supplies and professional services as well as development of infrastructure e.g. isolation centres and Intensive Care Units (ICUs).
- COVID-19 Stakeholders' Management Plan that outlines stakeholder engagement process and standards. The plan includes a budget for implementing the activities therein
- Targeted Testing Strategy for Coronavirus (COVID-19) in Kenya. The strategy among others provided for the planning of medical supplies that would be needed for testing different groups, which provided for planning for testing supply needs assessment and procurement planning and acquisition of Personal Protective Equipment (PPE), Infection prevention and Control (IPC) materials and diagnostic commodities.

The strategy provided the estimated quantities of the different supplies that would be required for each process. This guide was intended to enable the procuring entities involved in COVID-19 response and recovery effectively plan for procurement and utilization of the medical supplies and equipment.

The research found that MoH did not publish the COVID-19 recovery and response budget as well as the specific funds allocations to the county governments on their website. However, the ministry through the documents listed above demonstrated that it provided critical guidance to county governments on how to budget and what to budget for in terms of procurement of medical supplies and equipment for COVID-19 response and recovery.

National Treasury

The National Treasury is the lead agency in macroeconomic planning, which includes public expenditure management and fiscal planning. The National Treasury mobilized budgetary allocation for COVID-19 response and recovery through submission of supplementary budget II and III for 2019/20 financial year so as to reallocate funds for that purpose. For 2021/22, the National Treasury allocated Ksh. 8.8. billion for Kenya COVID-19 Emergency Response Project. The National Treasury demonstrated its agility in responding to Covid-19 response and recovery by preparing for approval the 2019/21 Supplementary budgets II and III. Besides preparing the overall national budgets for national and county government, the National Treasury also provides oversight over public financial management system through IFMIS. However, save for publishing of budget summary allocated to the ministry of health on COVID -19 response and recovery on its website, there was no evidence of publication of specific information on allocations for COVID-19 recovery and response by the National Treasury.

Under the National Treasury, the COVID-19 Emergency Response Fund was established through the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020. The Fund is managed by the COVID-19 Emergency Response Fund Board. The purpose of the Fund is to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic. The Auditor-General

observed that the Fund received an amount of Ksh. 1,355,468,968 but:

- the Fund Board had irregularly registered the Fund as a Company limited by guarantee, consequently privatizing it despite the fact that the Fund was a public entity

- the Fund lacked evidence of revenue and expenditure estimates and work plan

From the analysis carried out, there was no evidence that the Fund published information on the funds received and utilized.

The Office of the Controller of Budget

The Office of the Controller of Budget is responsible for overseeing the implementation of the budget by the national and county governments through authorization of expenditures as well as monitoring the budget implementation. The Office of the Controller of Budget published two reports with that described county budgets and expenditures on COVID-19 response and recovery. These reports are –

- County Governments Budget Implementation Review Report for the FY 2019/20
- County Governments Budget Implementation Review Report for the First Half FY 2020/21

The reports present a good platform for monitoring national and county budgets and expenditures related to COVID-19 response and recovery.

Auditor -General

The Auditor-General is responsible for auditing and reporting on the use and management of public resources by the public entities. The Auditor-General published two audit reports on COVID-19 response and recovery, which are:

- Special Audit Report of the Auditor-General on Utilization of COVID-19 Funds by the National Government Entities for the Period 13 March – 31 July 2020. The report observed that there were irregularities in regard to payment of allowances for Front Line Healthcare Workers, failure to provide supporting documents for expenditures in some instances
- Special Audit Report of the Auditor-General on Utilization of COVID-19 Funds by the County Governments. The report identified the following irregularities related to management of the COVID-19 funds:
 - Procurement irregularities
 - Lack of procurement plans, work plans and training for some specific COVID-19 activities (36 counties)
 - Lack of approved budgets (23 counties)
 - Payment of COVID-19 unrelated expenditure
 - Lack of utilization of funds
 - Double payment of Frontline Health Workers
 - Non-compliance with guidelines for disbursement of DANIDA conditional grants

The published reports identified revenues and expenditures of the Covid-19 response and recovery funds; the irregularities in funds allocation and utilization, which lays a good foundation of engagement on monitoring for accountability and sustainable utilization.

Public Procurement Regulatory Authority

The Public Procurement Regulatory Authority (PPRA) is responsible for regulating public procurement through monitoring, assessment, capacity development, standards setting and general oversight over implementation of Public Procurement and Asset Disposal Act, 2015 (No. 33 of 2015). The Authority issues circulars and guidelines on public procurement to be followed by all public entities. In addition, PPRA has set up and manages the Public Procurement Information Portal (PPIP), where all public entities are required to publish information on procurements undertaken as well as information on contracts entered into the Authority issued circulars on:

- Mandatory reporting requirements for public entities in 2020
- Roll-out of the upgraded Public Procurement Information Portal in 2021
- Preventive measures for handling of procurement activities for procuring entities due to Coronavirus (COVID-19)– Circular No. 2 of 2020

In exercise of its oversight mandate, the PPRA carried out an assessment of how counties conducted procurement related to COVID-19 response and recovery funds, which found irregularities related to delays in delivery of goods procured under emergency procurement, poor handling of unsolicited bids and poor handling of multiple awards.

Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti-Corruption Commission is responsible for enforcing ethics, integrity and anti-corruption legal requirements. Specifically, the Commission investigates allegations of violations of leadership, ethics and integrity laws such as breach of procurement laws. The Commission published information on investigations it had undertaken in relation to misappropriation or embezzlement of funds related to COVID-19 response and recovery such as investigations on a case in Vihiga County.

Parliament

Parliament is responsible for providing oversight over budgeting and public expenditure of public entities. The National Assembly in October 2020 published a report of inquiry into KEMSA's utilization of COVID-19 response and recovery funds that was prepared by the Departmental Committee on Health. The report described the funds received by ministry of health from National Treasury as well as funds disbursed to KEMSA, other Semi-Autonomous Government Agencies (SAGAs) and county governments. The report observed that –

- Funds disbursed to various SAGAs by the ministry of health that were earmarked for infrastructure improvement and purchase of medical equipment were not yet utilized due to delayed disbursement by the National Treasury.
- Various donations to and purchases for COVID-19 in some of the institutions inspected had not been utilized
- Some of the funds were misallocated
- There was underfunding to health facilities as they seemed overstretched
- Delays by the exchequer hindered emergency response to COVID-19 pandemic interventions
- Most counties had well utilized payment of allowance to Frontline Health Workers
- Ministry of health had not established a proper monitoring and evaluation framework for utilization of COVID-19 funds and national and county levels

County governments

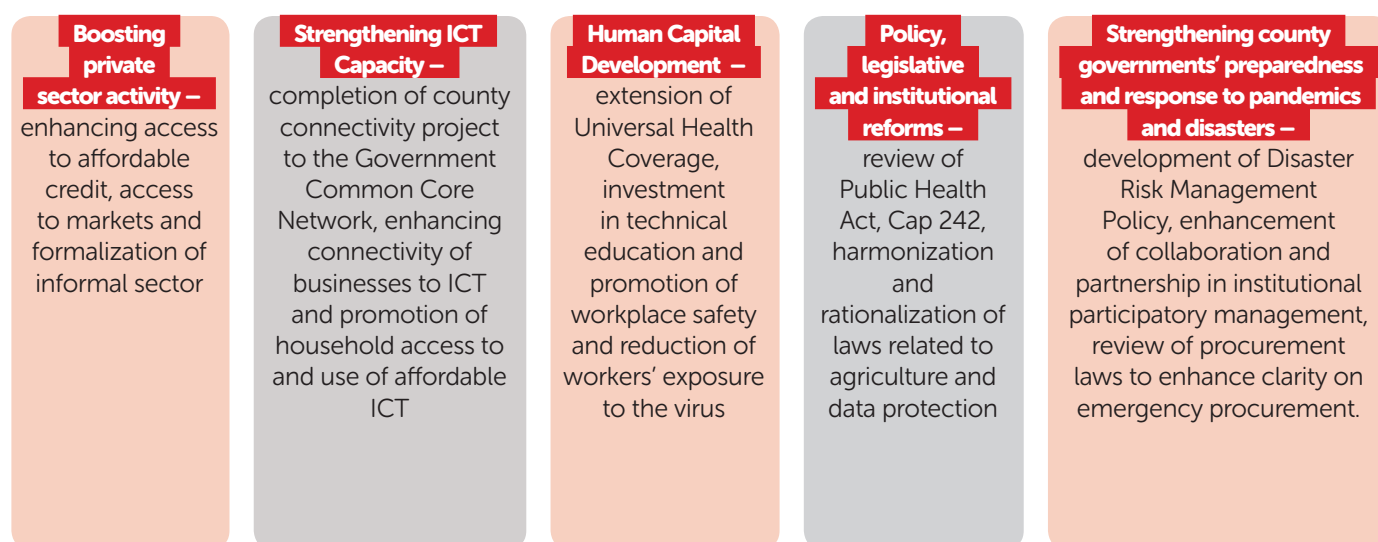
The county governments are responsible for county health services in accordance with section 2 of Part 2 of the Fourth Schedule to the Constitution. They are responsible for levels 1 – 5 health facilities as well community health services. Consequently, they have been involved in budgeting and procuring for goods and services in relation to COVID-19 recovery and response. During 2019/2020 Financial Year, county governments received Ksh. 7.71 billion as

transfer from national government through the Ministry of Health for COVID-19 response and recovery. Out of this, counties received Ksh. 5 billion as direct transfer based on revenue sharing formula for improvement of infrastructure, Ksh. 2.36 billion for allowances for Front Line Health Care Workers while Ksh. 350 million, which was a grant from DANIDA was disbursed as support to Level 2 and 3 health facilities. Further, county governments allocated a total of Ksh. 5.39 billion from their own revenue sources for Covid-19 response and recovery during the financial year 2019/20 (OCOB: 2021). A total of Ksh. 13.1 billion was available for spending by the counties but the reported expenditure was Ksh. 3.43 billion, which was a 26.1% absorption rate (OCOB:2021). The Office of Controller of Budget observed that the low absorption rate was due to late disbursement of the funds, which was towards the end of the financial year (OCOB: 2021).

At the county level, the departments of health were mainly the user departments that initiated emergency budgeting and contracting for Covid-19 response and recovery. The County

Treasury in each county was responsible for preparing the final budgets for approval by respective county assemblies. This was done through preparation of Supplementary Budgets for approval by county assemblies. The departments of health were also responsible for coordinating the COVID-19 response and recovery budget implementation/execution. However, some of the counties established further mechanisms for execution of COVID-19 response and recovery. For example, Nyeri County established the Emergency Response Committee while Turkana established the Covid-19 Fund Management Board.

In regard to inter-county coordination on Covid-19 response and recovery, the Council of Governors (COG) prepared and published the County COVID-19 Social – Economic Reengineering and Recovery Strategy 2020/21–2022/23. The Strategy described the strategies for interventions on Covid-19 response and recovery that were structured around 5 core pillars–



3.2 Legal Framework

Transparency and accountability in budget planning, execution and contracting in relation to COVID-19 response and recovery funds allocation and utilization is governed by different legal frameworks. The laws provide the

legal obligations of public entities to practice accountability and transparency in public finance management and engage the citizens in the process as well.

The Constitution of Kenya

Article (Art) 10 (2) (a) and (c) of the Constitution (2010) obligates public entities to adopt values of democracy, participation of the people, good governance, integrity, transparency and accountability in management of public finances. Art. 201 on principles of public finance stipulates that there should be openness, accountability and public participation in all matters of public finance, public money to be used in a prudent and responsible way and that financial management should be responsible and that fiscal reporting should be clear.

Art. 35 guarantees the right to access information held by State. The right provides safeguards for citizen participation for example right to access information related to management of COVID-19 response and recovery funds.

Public Finance Management Act

The Public Finance Management Act, No. 18 of 2012(PFMA) is the main law governing public finance management. The principle mandate of PFMA is to guide the national and county governments in the management of public finances while providing for the oversight authority of Parliament and county assemblies in public finances.

In line with the Constitution, the PFMA reflects the principles of transparency, accountability and participation in budgets and emergency contracting and procurement. Specifically in relation to COVID-19 funds allocations and utilization, the PFMA provides for:

Firstly, the establishment of the County Emergency Fund (S. 110–115) from which payments can be made in respect to an urgent and unforeseen need for expenditure for which there is no specific legislative authority in order to protect public interest in alleviating damage or harm to human life arising from the unforeseen event.

Emergency expenditures related to COVID-19 response and recovery could have been incurred under the Fund, especially within the first weeks when the coronavirus disease was declared a pandemic. However, the County Executive Committee Member for Finance is obligated to seek approval of the county assembly within 2 months from the time the first payment is made and subsequently submit Supplementary Appropriation Bill in relation to the funds spent. The research found that only 27 Counties had operationalized the fund through legislation while 20 had not as shown on Table 1 below.

CURRENT STATE: QUALITATIVE FINDINGS

Table 5: Counties with laws on emergency funds, citizen participation and access to information

County	Access to Information Laws	Public Participation Laws	Emergency (Fund) Laws
Baringo	-	√	-
Bomet	-	-	√
Bungoma	-	-	-
Busia	-	-	-
Elgeyo Marakwet	-	√	-
Embu County	√	√	-
Garissa County	-	-	√
Homa Bay	-	-	-
Isiolo	-	-	√
Kajiado	-	-	√
Kakamega	-	√	√
Kericho County	-	√	-
Kiambu	-	√	√
Kilifi	-	√	√
Kirinyaga	-	-	√
Kisii	-	√	√
Kisumu	-	√	√
Kitui	-	-	√
Kwale	√	√	√
Laikipia	-	√	-
Lamu	-	-	-
Machakos	-	√	-
Makueni	-	-	√
Mandera	-	√	√
Marsabit	-	-	√
Meru	-	√	√
Migori	-	-	-
Mombasa	-	√	√
Murang'a	-	-	-
Nairobi	-	√	√
Nakuru	-	√	-
Nandi	-	-	-
Narok	-	-	-
Nyamira	-	-	-
Nyandarua	-	√	-
Nyeri	-	√	√
Samburu	-	-	√
Siaya	-	-	-
Taita Taveta	-	-	√
Tana River	-	√	√
Tharaka Nithi	-	-	√
Trans Nzoia	-	-	-
Turkana	-	√	√
Uasin Gishu	-	-	-
Vihiga	-	√	√
Wajir	-	-	√
West Pokot	-	-	√
Total	2	22	27

CURRENT STATE: QUALITATIVE FINDINGS

There were 27 counties that had enacted county emergency and disaster laws. The research found number gaps in these laws:

■ The legislations do not provide for public oversight mechanisms for the emergency and disaster funds

■ The legislations do not provide for emergency contracting. Counties rely on PPDA and the regulations thereof.

■ Generation and publication of financial and non – financial reports: Currently, a majority of the emergency laws only provide for preparation and submission of financial reports within three months after the end of each financial year to the Auditor-General and not non-financial reports.

■ County COVID 19 Response Fund Board: In the cases of Taita Taveta and Turkana counties, the current regulations provide for the establishment of the COVID 19 Response Fund Board. The structure and composition is devoid of broad representation particularly of oversight institutions. The Board is only comprised of members of the County Executive.

Secondly, the preparation and approval of County Fiscal Strategy Paper (CFSP), Annual Budget- which culminates into the Annual Appropriation Bill, Annual Development Plan- which provide for the planning of public expenditures. In terms of budget performance review, the PFMA provides for the preparation of the quarterly budget implementation reports and the annual County Budget Review and Outlook Paper (CBROP), which assess budget performance. The PFMA also requires the national and county government to engage the public in preparation

of the budget documents and to publish them.

Pursuant to the PFMA, Parliament has further enacted three regulations that are pertinent to publishing and monitoring of COVID-19 related funds allocations and utilization. These are; The Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020, The Public Finance Management (National Government) Regulations, 2015, and The Public Finance Management (Senate Monitoring And Evaluation) Regulations, 2018.

The Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020

The Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 provide for, among other objectives, the establishment of the COVID-19 Emergency Response Fund to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic. The main limitation is that the regulations do not provide for mechanisms for citizen oversight of the fund, participation and access to information about its programmatic and financial activities.

The Public Finance Management (National Government) Regulations, 2015

The Public Finance Management (National Government) Regulations, 2015 provide for, among other objectives, to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources⁸. In order to guide public participation in the budget process as mandated by Section 207 of the PFMA, rule 6 of the regulations provide that the public shall be provided with full access to financial information in a timely manner for purposes of seeking public input, by:

- establishing a focal point to facilitate access to financial information or;
- making information available in the media or;
- presenting information in national languages, summarised and user-friendly forms; or
- making financial information available on websites that allow for information to be downloaded.

Essentially, the regulations do mandate the National Treasury to arrange for effective public participation during the planning and development annual budget estimates including the publication of citizens' budgets. No provisions are made for public participation in emergency context specifically on how to engage citizens in supplementary budget making process.

⁸ http://www.parliament.go.ke/sites/default/files/2017-05/Legal_Notice_No._34_National_Govt_Regu.pdf

The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018

The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 establishes the Senate Monitoring and Establishment of Evaluation Fund⁹. The purpose of the fund is to carry out monitoring and evaluation activities in exercise of the Senate's oversight function over county governments. Specifically, to:

- Promote citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;
- Initiate partnerships with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- Undertake social auditing of development projects being undertaken in the counties;
- Monitor development activities in the counties;

⁹ http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2018/LN71_2018.pdf

National Emergency Fund Legislations

At the national level, there is no specific law enacted to deal with on emergency response and recovery. However there are three parallel processes by the National Assembly and Senate that have proposed three separate bills

- In 2019, the National Assembly developed the National Disaster Management Authority Bill. The Bill presented by Member of Parliament Kimani Ichung'wa, seeks to establish a centralized system of responding to and managing disasters in the country by creating the National Disaster Management Authority; which is to liaise with other agencies in both the National and County Governments in discharging its functions, and the establishment of an early warning disaster monitoring and information system.
- In the wake of the COVID 19 pandemic, the Senate Ad-Hoc Committee on COVID-19 Situation in Kenya developed the Pandemic Response and Management Bill, 2020 which seeks to provide a framework for the effective response to and management of a pandemic in order to prevent the occurrence or spread of a pandemic whenever it arises. It also seeks to provide measures to militate against the effects of the pandemic and provide a mechanism to cushion those that may be adversely affected by the pandemic.
- Further, in 2021, Senators Mutula Kilonzo and Johnson Sakaja introduced The Disaster Risk Management Bill, 2021 seeks to establish the National Disaster Risk Management Authority and County Disaster Risk Management Committees; to provide a legal framework for the coordination of disaster risk management activities.

The research found that the three Bills are yet to be passed into law. The Bills seek to address more or less similar objectives of providing a coordinated response and coordination between the National and County Governments in the event of a pandemic or disaster. There is need for the legislative and oversight interventions on emergency response and recovery to be approached in a coherent manner.

Public Procurement and Disposal Act

The Public Procurement and Asset Disposal Act, No. 33 of 2015(PPDA) provides the legislative framework for regulation of public procurement. Essentially, it gives effect to Section 227 which makes it mandatory for State organs or public entities to use a procurement system that is fair, equitable, transparent, competitive and cost-effective when contracting for goods and services. Under Section 3 of the PPDA, public procurement shall be guided by national values and principles of public finance which include transparency public participation and accountability.



To what extent does this law facilitate publishing and monitoring of emergency contracting and procurement in the context of COVID-19?

The procurement law does not have clear and specific guidelines on how to conduct emergency contracting and procurement. The basis for procurement is provided under Sec. 91 which provides that open tendering shall be the preferred method of procurement. However, an alternative method may be used subject to conditions under the PPDA.

Where there is an emergency, Section 103 (1) (b) & (c) provides an alternative method. It permits a procuring entity to use direct procurement method as long as the purpose is not to avoid competition and within the set procedures, where 'there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical'.

Section 2 defines urgent need as the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety or of damage to property, such that any engaging in tendering proceedings or any other procurement methods would not be practical. Procurement of goods works or services in relation to COVID-19 response and recovery would be classified under procurement as urgent need, especially during the period immediately after COVID-19 was declared as a pandemic in Kenya. All procurements must be approved, and properly dated and adequate evidence must be provided as evidence to verify emergency for procurement undertaken to solve an urgent need. In the circumstances where the procurement is urgent, section 69 (2) and (3) allows for retrospective approval - after procurement has already been undertaken.

However, there are no clear guidelines on how retrospective approvals (approvals after procurement has already been undertaken) should be made, how the approval process should be implemented once an urgent procurement is made. Section 69(2) and (3) only provide as follows:



"(2) No procurement approval shall be made to operate retrospectively to any date earlier than the date on which it is made except on procurements in response to an urgent need.

(3) In approving procurements relating to an urgent need, the accounting officer shall be furnished with adequate evidence to verify the emergency".

Also, no further elaboration is provided for instance on how the inspection and payment processes would be undertaken. There is need for the Act and the regulations to:

- Provide for guidelines on direct procurement under emergency or urgent circumstances to guide the procuring entities with further information so as to enhance transparency in the process
- Stipulate the maximum duration where the use of direct method would be in place before an issue ceases to be urgent so as to allow for the tendering procurement method to be adopted
- Provide regulations to expound on retrospective approvals.
- Guidelines on how to handle unsolicited bids during emergency procurement – where suppliers are not invited but express desire to supply-The procedure for direct procurement only recognises the issuance of a tender document as the basis of invitation to apply and subsequent negotiations with the supplier
- Guidelines on how to apply multiple awards with regard to one item from multiple suppliers

Publishing of emergency contracting information

Rule 50 of the Public Procurement and Asset Disposal Regulations 2020 obligates the procurement entities to publish their annual procurement plans in the State Portal (PPIP). However, according to PPRA, the procurement plans are not accessible to the public in the PPIP¹⁰.

Section 138(1)(2)(3) of PPDA and Regulation 60 of the Public Procurement and Asset Disposal Regulations 2020 obligates procurement entities to report all tenders and contract awards (including emergency contract tenders and awards) to the Public Procurement Regulatory Authority, which then publishes the information in the State Portal (Public Procurement Information Portal- PPIP). While this requirement is intended to promote transparency in public procurement and enhance monitoring of public contract there exists significant barriers. First, most procuring entities do not report on tenders and contracts awards as required as noted most of the data provided is either insufficient or inconsistent. Secondly, the rule only requires procuring entities to report the tender notice and the tender document and the fact of the contract award and details thereof but not an obligation to publish the bidding documents and contracts themselves. Thirdly, publication of procurement contracts awarded by the national security organs is strictly prohibited (Section 138(5))

Citizen engagement in monitoring of emergency contracting and procurement

The PPDA does not provide for clear provisions for citizen engagement in emergency contracting. Section 78 (4), only allows bidders or their representatives to attend the opening of tenders by the tender opening committee.

Copies of the tender opening register are not published or accessible by the public except upon request by a bidder under section 77 (8) of PPDA. Also, the section restricts the information to be availed to only the tender opening register. Other important but related information of the tender opening proceedings such as the tender committee composition itself and the minutes on the proceedings are not disclosed/provided.

¹⁰ Interview with PPRA Officials

Further the PPDA does not prescribe the time frame within which the information is to be availed by the accounting officer.

Access to Information Act

Access to Information Act, No. 31 of 2016 seeks to implement Article 35 of the Constitution on the right to accessing public information. The Act promotes access to public finance information held by public entities in relation to COVID-19 response and recovery funds.

The Access to Information Act, 2016 provides the basic framework that guides information and access to information on COVID-19 related funds allocations and utilization. As per its title, the objectives of the Act are to give effect to the constitutional right to information (Section 3(a), to provide a framework that encourages pro-active disclosure by public and private entities (Section 3(b), to provide a framework for disclosure by private entities (Section 3(c), to promote a culture of openness through periodic and regular disclosures by public entities, make provision of protection of informers (Section 3(d), and provide a framework within which public awareness on the right can be raised (Section 3(e).

The Act provides a fairly robust legislative and institutional framework on access to information including the provisions that: Citizens have the right to access information held by State expeditiously and at reasonable cost, public entities are obligated to disclose information as may be required by citizens, public entities have a duty to publish relevant facts when formulating policies, public entities are obligated to publish in their websites information on contracts awarded without requests. The Act has significant gaps which limit access to information as discussed below:

1st

The Act lacks regulations to guide the manner and form on which requests to access information held by government institutions can be made, and the measures to be taken by government institutions to facilitate access to the information. However, draft regulations have been developed.

2nd

The Act provides a very broad scope of exceptions which undermines the effectiveness of access to information on emergency contracting, budgets and audit by citizens. Section 6(1) of the Act does not allow access to information whose disclosure is likely to:

- undermine the national security of Kenya;
- impede the due process of law;
- endanger the safety, health or life of any person;
- involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;
- substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;
- cause substantial harm to the ability of the Government to manage the economy of Kenya;
- significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration; and
- damage a public entity's position in any actual or contemplated legal proceedings; or infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.

These overly broad exemptions present the potential for public institutions to withhold information even when it should be disclosed. Furthermore the exemptions make the application of the Act more complex and create opportunities for public entities to apply multiple and overlapping exemptions to the same information at the same time.

International human rights standards demand that exemptions should only apply when set out in law and protects only limited legitimate interests; and only where disclosure would pose a risk of harm to a protected interest. There is need to protect only what requires protection by reviewing the exemptions in the Act to make them limited and specific.

3rd

The CAJ has no legal powers to make binding recommendations where there has been an infringement of any of the provisions of the Act including failure by public bodies to provide information on emergency contracting, budgets and audits.

The Act empowers the CAJ with oversight and enforcement mandate (Section 20(1). To achieve this, the CAJ is supposed to investigate on its own motion or upon receipt of a complaint regarding a violation of the Act (Section 21), thereafter to hear and determine the complaint (Section 21) and finally make a decision. Moreover, the CAJ is empowered to issue summons requiring the attendance of any person, to produce any document or records, question any person with regard to the subject matter and require information within that person's knowledge to be disclosed (Section 23(1). If satisfied that the Act was infringed, the CAJ may order that the applicant to be compensated (Section 23(2).

However, a recent decision of the Supreme Court of Kenya case(below) found that the CAJ cannot exercise the powers as provided for under Section 23(2)(3)(4)&(5) of the Access to Information Act.

Case review: Kenya Vision 2030 Delivery Board vs The Kenya Commission on Administrative Justice & others

In the Supreme Court of Kenya Petition No. 42 of 2019 between *Kenya Vision 2030 Delivery Board vs The Kenya Commission on Administrative Justice & others*, the Petitioner challenged the power of the CAJ to make binding recommendations to a public body concerned in an alleged violation of human rights and take remedial action. Among the key issues for determination was whether the recommendations of CAJ are binding on public bodies, and if public bodies have an obligation to implement CAJ's recommendations?

The Court found that whereas CAJ has the requisite mandate to make recommendations to a public officer or a public body, the same is not binding. A recommendation can only be binding when the same is specifically provided for in the Constitution or in law. Neither the Constitution nor the CAJA states that CAJ's recommendations are binding. That under Section 42(4) of the CAJA, the remedy where there has been non-compliance with the recommendations of the CAJ, is for the CAJ to prepare a report of the Board's failure to implement the recommendations to the National Assembly for appropriate action. It is the duty of Parliament to implement reports from commissions pursuant to Article 254(1) of the Constitution and Section 8 of the CAJA. Commissions therefore cannot implement their own recommendations nor force a recommendation on a public body lest they usurp the role of Parliament, which is the organ vested with the mandate to enforce implementation.

The implication of the decision of the court is that it has weakened the oversight role of the CAJ under the Access to Information Act. Therefore, in order to strengthen the enforcement powers of the CAJ, there is need to amend the constitution to expressly grant the CAJ order-making power. The order making power is important as it will give the CAJ greater authority to ensure public entities do not abuse the exemptions in Act; Also, it will reduce the redundancy of having two levels of institutions (CAJ and Parliament) of review of the same decision with respect to access to information requests, which can result in more timely access to information; and provide finality for requesters because orders of the CAJ will be binding unless reviewed by the Court.

There is also need to amend the powers of CAJ under Section 23(2) (3) (4) & (5) of the Access to Information Act to align with remedies provided under Section 42(4) of the Commission on Administrative Justice Act (CAJA), the remedies where there has been non-compliance with the recommendations of the CAJ.

The Access to Information (General) Regulations, 2021

Pursuant to section 25 of the Access to Information Act, 2016, the Cabinet Secretary for Information, Communications, Technology, Innovation and Youth Affairs in consultation

with the Commission on Administrative Justice have proposed the The Access to Information (General) Regulations, 2021.

The regulations provide for the process for proactive disclosure of information by public entities and private bodies; the procedure for requesting access to information pursuant to the Act; record keeping by public entities and private bodies; the procedure for reviewing a complaint of denial of access or refusal to correct a record; oversight of compliance on the provisions of the Act; and the procedure for reporting by public entities and private bodies (Section 3).

Regulation 8 provides for proactive disclosure obligations of public entities. Specifically the disclosure of all financial and other reports required by the Public Finance Management Act, 2012; disclosure of a comprehensive list of all pre-qualified suppliers, contractors and consultants in the various specific categories of goods, works or services pre-qualified by the public entity according to its procurement needs; disclosure of procurement records, and complete information of all tenders awarded.

However, the main limitation is that regulations do not provide any obligation to an information access officer of a public entity to ensure complete contracting information specifically with regard to bidding and contract documents, reports on completion of contracts and audit reports are published on the entity's website.

Access to Information Laws at County Level

The research found that only 2 counties have enacted Access to Information laws, i.e. Kwale County Government and Embu County Government (See Table 5). The Acts are modelled around the national Access to Information Act 2016. There is need for counties to enact access to information laws and regulations.

For Kwale and Embu counties access to information legislations, the research found that there is need to amend the provisions granting powers to the CAJ to be in line with the current law. Also, the counties should develop regulations to facilitate citizens' access to information.

County Governments Act

Part VIII of the County Governments Act, No. 17 of 2012 provides for citizen participation in the county processes, policy making process and in the county decision-making process. Part IX safeguards the rights of citizens in the county to accessing information held by the county. The Part also obligates county governments to communicate to the citizens on the county decision-making processes. However, the Act does not provide for the specific procedures of actualizing the citizen participation and access to information.

County public participation laws

Under and paragraph 14 of Part 2 of the Fourth Schedule of the Constitution of Kenya and, section 91 of the County Government Act county governments are required to facilitate the establishment of modalities for citizen participation in governance including structures for engagement such as electronic platforms, town hall meetings, budget reparation and validation fora, notice boards announcing procurement, awards and other announcements of public interest.

The research found that there were 22 counties with Public Participation Acts, which accounts for 47% of the counties. These counties are: Meru, Laikipia, Nyeri, Vihiga, Turkana, Mandera, Mombasa, Tana River, Kiambu, Kwale, Nakuru, Nyandarua, Baringo, Embu, Kakamega, Kilifi, Kisumu, Nairobi City, Elgeyo Marakwet, Kericho and Machakos and Kisii. Makueni has a public participation policy and is processing its public participation bill for enactment.

While there were 10 counties operating without any specific policy or law on public participation. These were; Garissa, Kirinyaga, Kitui, Migori, Narok, Nyamira, Tharaka Nithi, Trans Nzoia, Uasin Gishu and Wajir.

Presence of public participation laws in the counties provides a framework for citizen engagement at the county level, e.g. monitoring of COVID-19 response and recovery funds. At the same time, the counties without public participation laws or may not be facilitating citizens in their jurisdictions to engage in public decision-making process.

At national level, a draft public participation policy has been tabled before Cabinet. Both National Assembly and Senate are currently considering two Public Participation Bills through a parallel process. Both seek to provide a framework for public participation. There is need for Parliament to amalgamate the two Bills as the objectives are similar.

3.3 Policy Context

The government of Kenya has made some policy decisions and pronouncements that advance open contracting, emergency procurement and citizen participation in a way that would advance transparency and accountability on management of Covid-19 funds.

The President of the Republic of Kenya issued the *Executive Order No. 2 Of 2018 on Procurement of Public Goods, Works and Services by Public Entities* where public entities were obligated to maintain and continuously update and publicise (through the websites of the Public Procuring Entity, e-Citizen, PPRA platforms, public notice boards and official government publications). The Executive Order in addition provided for the specific details to be provided for publishing in relation to the procurements. The Executive Order was strengthened by the adoption of the government portal (PPIP) through the Public Procurement and Disposal Regulations, 2020.

The Council of Governors (COG) prepared and published the *County COVID-19 Social – Economic Reengineering and Recovery Strategy 2020/21–2022/23*. The Strategy described the measures and strategies for interventions on Covid-19 response and recovery.

3.3.1 Commitment to open data and open contracting

The national and some county governments' have made commitments to the Open Government Partnership (OGP) commitments and some key practical steps taken to realize the commitments¹¹.

¹¹ The Open Government Partnership (OGP) is a global partnership that brings together government reformers and civil society leaders to create action plans that make governments more inclusive, responsive, and accountable.

At national level, the Government of Kenya has, since joining the OGP in 2011, implemented three action plans that have resulted into realization of concrete steps to enhance transparency and access to information through institutional initiatives like Kenya Open Data Initiative (KODI)¹² legislative changes such as the enactment of The Access to Information Act, 2016¹³ and the Bribery Act of 2016¹⁴, policy developments such as the Executive Order no. 2 of 2018 on procurement transparency¹⁵ and the use of technology in public finance and procurement, for example Integrated Financial Management Information System (IFMIS)¹⁶, Public Procurement Information Portal (PPIP)¹⁷ and Beneficial Ownership e-Register.¹⁸

Currently, the government is implementing eight commitments under National Action Plan IV (NAP IV), relating to Open Contracting, Beneficial Ownership, Open Data for Development, Public Participation and Legislative Openness, Improving Public Service and Delivery Performance, Access to Information, Access to Justice and Building Open Government Resilience.¹⁹

At county level, the research analyzed all the 47 county governments' commitments to open data and open contracting and found that only a few counties are making real progress:

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- <https://www.opengovpartnership.org/>
 - ¹² <https://www.opendata.go.ke/>
 - ¹³ <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/AccessToInformationActNo31of2016.pdf>
 - ¹⁴ http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/BriberyAct_47of2016.pdf
 - ¹⁵ <https://www.president.go.ke/2018/06/13/executive-order-on-procurement-of-public-goods-works-and-services-by-public-entities/>
 - ¹⁶ <https://www.treasury.go.ke/ifmis/>
 - ¹⁷ <https://tenders.go.ke/>
 - ¹⁸ Available at: <https://brs.ecitizen.go.ke/>
 - ¹⁹ OGP NAP IV: 2020-2022, available at : https://www.opengovpartnership.org/wp-content/uploads/2021/03/Kenya_Action-Plan_2020-2022.pdf, PP-13-14

Elgeyo Marakwet and Makueni Counties have both made commitments on open data and have progressed on adopting Open Contracting approaches and the Open Contracting Data Standard through the launching of Open Contracting portals. The portals collect and publish emergency contracting information which is accessible to the public. However, civil society and the public within the two counties still lack adequate capacity to re-use the data generated by the portals.

■ In addition, **Elgeyo Marakwet** is currently implementing five commitments from their 2018-2020 Local Action Plan with significant promise to contribute to an open COVID-19 response. These commitments relate to open procurement, health service delivery, civic engagement, inclusion of marginalized groups, citizen oversight and youth engagement²⁰.

²⁰ Elgeyo Marakwet County, Open Government Partnership Local Action Plan II (2018-2020), September 2018, Section 3.4, https://www.opengovpartnership.org/wp-content/uploads/2018/09/Elgeyo-Marakwet_Action-Plan_2018-2020.pdf

■ **Vihiga County** is one of the implementation partners of the Kenya OGP National Action Plans commitments on Open Geo Spatial Data for Development²² and open data for development²³. The county is yet to develop an action plan but is keen on further engagement with partners on strengthening its contracting systems.

²² https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

²³ https://www.opengovpartnership.org/wp-content/uploads/2021/03/Kenya_Action-Plan_2020-2022.pdf

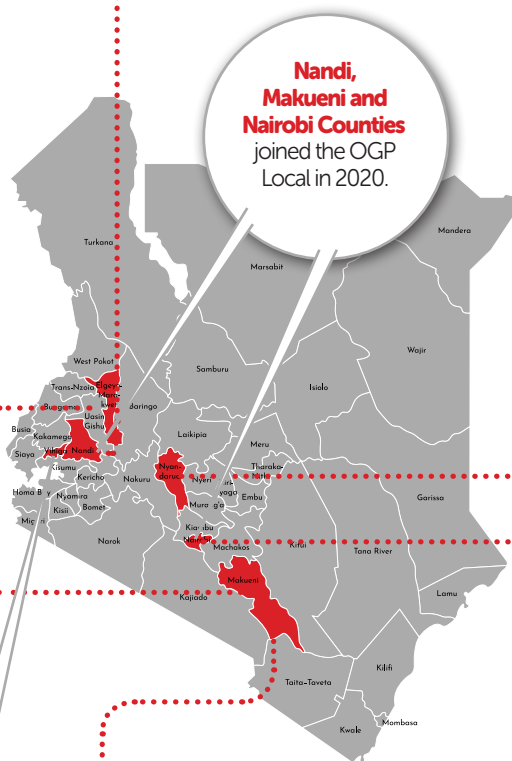
Nandi County developed an OGP Sub National Action Plan and an implementation framework. Under the Plan, the county has committed to; Expand and restructure participatory structure to promote, and Reform the procedure for procuring and contracting for public goods, works and services to reduce barriers that limit the participation of suppliers and contractors from accessing economic opportunities available in public procurement. The OGP team within the county is looking for partnerships with stakeholders to implement the plan.

● **Nyandarua County** has sought clarifications on the open governance and open contracting agenda.

● **Nairobi County** through the Nairobi Metropolitan Services has developed an OGP Sub-national Action Plan for 2021-2022 and committed to; Implement a county addressing system framework that supports economic growth and improved service delivery, Increase reporting on public contracting to ensure increased public sector expenditure efficiency, accountability, value for money, and transparency to support improvements in service delivery, monitoring, and evaluation in Nairobi County, Strengthen service delivery and accountability in the Nairobi City County government through establishing a service delivery monitoring platform, Improve the quality of the government's public engagement and involve a more diverse range of Nairobi residence in the decision-making process, and Ensure continuity of open government efforts across political administration existing through the transitional phases.

● **For Makueni**, the sub-national government joined OGP as part of the 2020 intake. The county government has successfully rolled out the Open Contracting Data Standard (OCDS) and plans to implement phase two of the OCDS that will include project monitoring²¹. The County has recently developed the OGP Sub National Action Plan for 2021-2022 which contains three commitments; first, to implement a county addressing system framework that supports economic growth and improved service delivery; secondly, to increase reporting on public contracting to ensure increased public sector expenditure efficiency, accountability, value for money, and transparency to support improvements in service delivery, monitoring and evaluation in the County; and thirdly, to improve the quality of public participation through enhancing the involvement of PLWDs and women participating in the decision-making process. The County has also developed a draft Open Contracting Bill and policy and requires support in to finalize the policy and legislation development process.

²¹ ibid



3.4 Technical Framework

Reporting and publishing on procurement and contracting

The Executive Order No. 2 Of 2018 on Procurement of Public Goods, Works and Services by Public Entities required procurement entities to publish complete information on tender opportunities and contract awards in PPIP monthly basis. Specifically, procuring entities are required to publish information on particulars of the awarded bidder, specification of goods and services, technical and financial capacity of the awarded bidder, date of the contract, current market price of the specific goods, works and services and names of the members of the relevant procurement committees.

Further, the PPRA issued circular on all reporting requirements that public entities must make such as monthly reports for all signed contracts, contracts amendments and variations and termination of contracts among others.

In order for procurement entities to submit reports to the government portal (PPIP), they are required to register with the PPRA through the portal and issued with the necessary credentials for accessing the portal. Currently, there are 305 procurement entities that have registered with PPIP. Below is a summary of the counties (Executive) that have registered with PPIP and those that have uploaded procurement reports related to COVID-19 response and recovery funds.

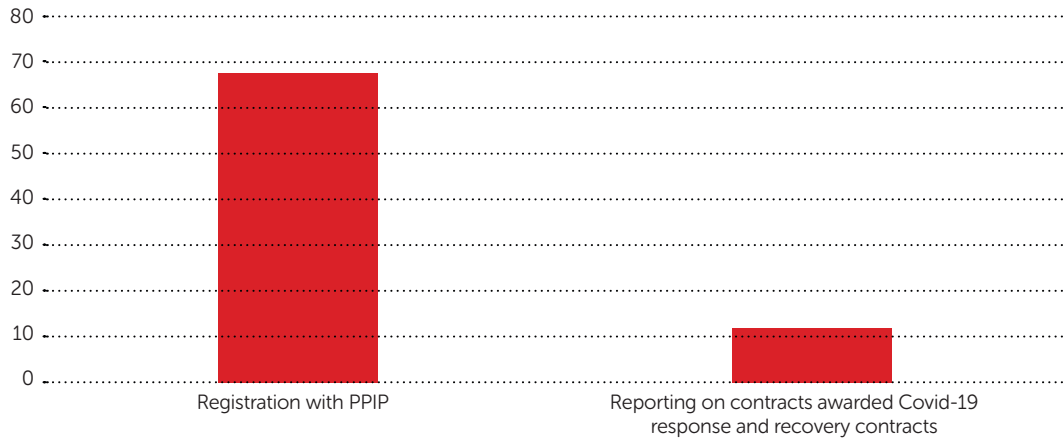
Table 6: Analysis of Registration and Reporting on COVID-19 response and recovery contracts awarded by County Governments (Executive) with PPIP²⁴

	County	Registration with PPIP	Reporting on contracts awarded Covid-19 response and recovery contracts
1	Nyeri		Yes
2	Uasin Gishu		Yes
3	West Pokot		Yes
4	Busia		Yes
5	Meru		Yes
6	Samburu		None
7	Kakamega		None
8	Kitui		None
9	Kirinyaga		None
10	Nandi		None
11	Nyandarua		None
12	Embu		None
13	Nyamira		None
14	Turkana		None
15	Bungoma		None
16	Machakos		None
17	Kilifi		None
18	Mandera		None
19	Nairobi		None
20	Trans Nzoia		None
21	Kiambu		None
22	Kajiado		None
23	Kwale		None
24	Makueni		None
25	Laikipia		None
26	Vihiga		None
27	Baringo		None
28	Siaya		None
29	Murang'a		None ²⁵
30	Bomet		None
31	Kisumu		None
32	Taita Taveta		None
	Total	32	5

²⁴ PPRA (2021). Public Procurement Information Portal. Available at: <https://www.tenders.go.ke/ProcuringEntities>

²⁵ The county reported on award of contract for installation of oxygen gas plant.

Figure 1: Analysis of Registration and Reporting on COVID-19 response and recovery contracts awarded by County Governments (Executive) with PPIP



The following observations were made from the analysis of registration of counties with the PPIP:

- County executive had been classified as State departments, State corporations, public universities or county assemblies procurement entities, which would not be the case

68%

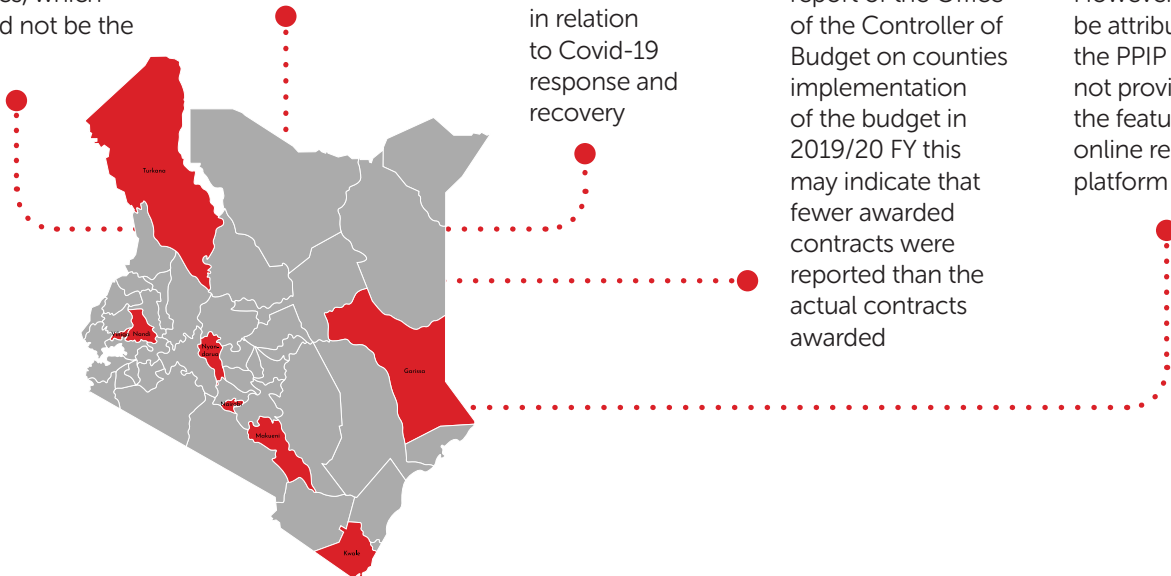
of the counties have registered with PPIP, while 32% have not yet registered

12%

Only 12% of the counties registered with PPIP reported on any form of contract awarded in relation to Covid-19 response and recovery

- The reporting on Covid-19 response and recovery related contracts awarded was below the reported expenditures by the counties in the report of the Office of the Controller of Budget on counties implementation of the budget in 2019/20 FY this may indicate that fewer awarded contracts were reported than the actual contracts awarded

- Counties did not report on technical and financial capacity of the awarded bidders, current market price of specific goods, works and services. However, this may be attributed to the PPIP portal not providing for the features in the online reporting platform



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This implies that compliance with the procurement reporting and publishing requirements is still low, especially non registration with PPIP by 32% of the counties as well as reporting on COVID -19 response and recovery contracts awards.

As previously noted some counties have taken up open contracting initiative and adopted the open contracting data standards especially in relation to publishing of open contracting information. Elgeyo Marakwet and Makueni counties have open contracting portal published in its website where it publishes information on tenders and procurement plan. However, it remains unclear how the portals will be linked to PPIP.

Reporting and publishing of budgets and related instruments by counties

Counties are obligated to publish their budgets, related instruments/policy documents and development plans and engage stakeholders in their preparation. Publishing of the budgets and related instruments by the counties enhances accountability and citizen, stakeholder and public engagement and participation.

Counties are required under the Public Finance Management Act, No. 18 of 2012 to prepare the following policy instruments related to budgets, and that have implication on reporting related to COVID-19 response and recovery funds utilization and allocation–

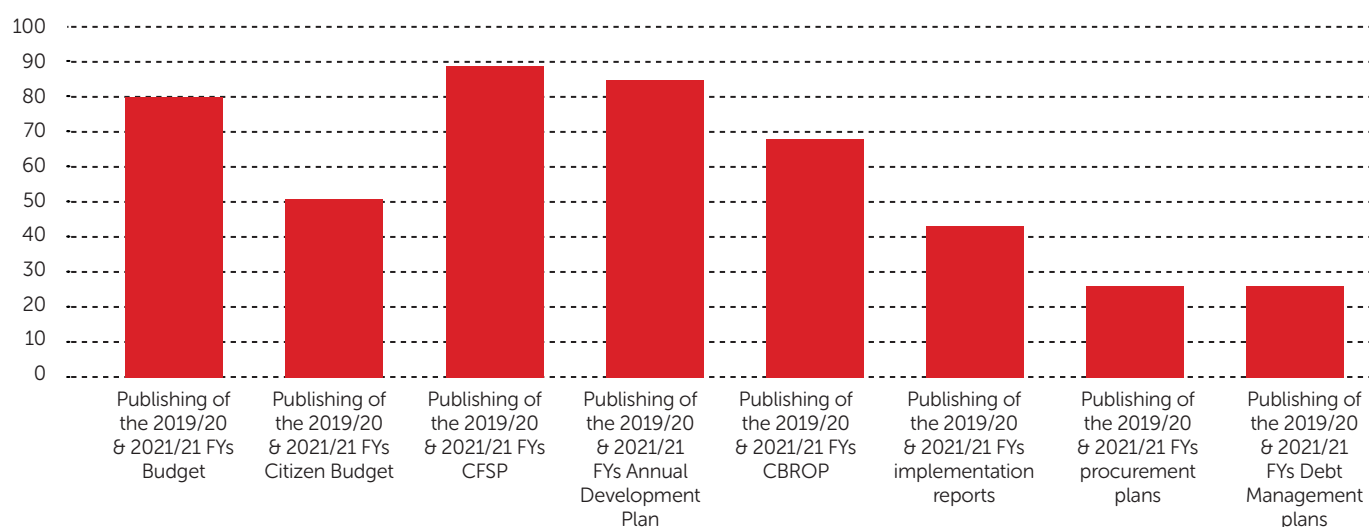
- County Budget (as well as a simplified version of the budget, which is commonly referred to as the Citizen Budget)
- County Fiscal Strategy Paper (CFSP)
- Annual Development Plan (ADP)
- County Budget Review and Outlook Paper (CBROP)
- Quarterly Budget Implementation Reports

All the county governments have operational websites with diverse information provided and usability of the information. The table below summarizes the status of counties reporting on budgets and related instruments.

Table 7: Status of counties publishing budget related information (Source: Counties websites)

County	Publishing of the 2019/20 & 2020/21 FYs Budget	Publishing of the 2019/20 & 2020/21 FYs Citizen Budget	Publishing of the 2019/20 & 2020/21 FYs CFSP	Publishing of the 2019/20 & 2020/21 FYs Annual Development Plan	Publishing of the 2019/20 & 2020/21 FY CBROP	Publishing of the 2019/20 & 2020/21 FY budget implementation reports	Publishing of the 2019/20 & 2020/21 FY Procurement plans	Publishing of the 2019/20 & 2020/21 FY Debt management plans
1 Baringo							–	–
2 Bomet		–				–		√ 26
3 Bungoma		–					–	
4 Busia							–	–
5 Elgeyo Marakwet						–		–
6 Embu	–	–		–	–	–	–	
7 Garissa		–				–	√ 27	–
8 Homa Bay	–	–	–		–	–		
9 Isiolo		–			–	–	√ 28	
10 Kajiado						–	–	–
11 Kakamega								–
12 Kericho							–	
13 Kiambu		–					–	–
14 Kilifi		–					–	–
15 Kirinyaga								
16 Kisii					–	–	–	
17 Kisumu		–		–		–	–	–
18 Kitui					–	–	–	
19 Kwale								
20 Laikipia							–	
21 Lamu		–				–	–	–
22 Machakos							–	–
23 Makueni						–		
24 Mandera							–	–
25 Marsabit	–	–	–	–	–	–	–	–
26 Meru		–				–	–	–
27 Migori	–	–	–	–	–	–	√ 29	–
28 Mombasa	–	–		–	–	–	–	–
29 Murang'a		–				–	–	–
30 Nairobi		–				–		
31 Nakuru						–	–	√ 30
32 Nandi							–	–
33 Narok							–	–
34 Nyamira								
35 Nyandarua							–	–
36 Nyeri							–	
37 Samburu							–	√ 31
38 Siaya							√ 32	–
39 Taita Taveta	–	–	–		–		–	√ 33
40 Tana River							–	–
41 Tharaka Nithi					–	–	–	–
42 Trans Nzoia							√ 34	–
43 Turkana							–	–
44 Uasin Gishu		–	–	–	–	–	–	–
45 Vihiga	–	–			–	–	√ 35	
46 Wajir	–	–		–	–	–	–	–
47 West Pokot							–	–
Total	38	24	42	40	32	20	12	12
Percent	80%	51%	89%	85%	68%	43%	26%	26%

- 26 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 27 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 28 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 29 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 30 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 31 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 32 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting. It is notable that the procurement plan was prepared departmental level.
- 33 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 34 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 35 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.

Figure 2: Analysis of status of counties publishing budget related information

From Figure 1 above, most counties (89%) published information related CFSP, followed by Annual Development Plan (85%) and Annual Budgets (80%) while 68% of the counties published information on CBROP. Further, only 26% of the counties published information on procurement plans and debt management plans and only 43% published information on budget implementation reports. There were 51% of the counties that published information on citizen budgets. This would be a hindrance to citizen engagement in oversight and monitoring of budgets.

The study also observed from the analysis that Bomet, Bungoma, Kakamega, Kwale, Laikipia and Makueni counties published most of the policy documents (7 out of 8). Marsabit County had not published any of the referred policy documents. Wajir, Uasin Gishu, Migori, Mombasa, Homa Bay and Embu counties had only published one policy document each.

3.5 Citizen engagement

Citizen engagement³⁶ or public participation in governance processes in Kenya is safeguarded in the Constitution as one of the national values of principles and governance. Public entities are obligated to engage citizens at all levels of governance and public decision-making processes.

³⁶

<http://publicaudits.ke/county-partners-work/>

Opportunities of citizen engagement in public funds management

There are diverse opportunities for citizen engagement in budget process, open contracting as well as emergency contracting process such as making input into the budget making process as well as monitoring budget execution. At national and county level, the opportunities available under the Public Finance Management Act, Access to information Act, County Governments Act, Public Procurement and Disposal Acts, county public participation laws and county communications platforms among others include:

- Public participation forums during budget making process throughout the budget cycle. County governments normally place public advertisements and notices during the budget making process and organize public fora. Citizens should take the opportunity to participate in such public meetings.
- Sector Working Groups, which are active especially at national level in providing space for public discourse on budget planning. Sector working groups organize public hearings where citizens are invited to present their views and budget proposals. At national level, the National Treasury coordinates the budget hearings

- Public complaints mechanisms and hotlines for reporting malpractices set up by various government systems. As part of public service performance management and service delivery, public entities have put in place complaints mechanisms where citizens could engage on reporting complaints of public funds management. In additions, public entities such as Commission on Administration of Justice (CAJ) and Ethics and Anti-corruption Commission (EACC) have mechanisms where citizens could report any incidence related to misuse of public funds
- Social media platforms such as Facebook and Tweeter that various government entities have set up to engage with real-time public discourse on emerging issues. Currently, wireless internet subscribers per 100 inhabitants are 90 persons³⁷. Specifically, internet

³⁷ The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting

users in Kenya are estimated to be 21.7 million with internet penetration estimated to be 40% being³⁸. Social media users are estimated to be 11 million. In addition, there are 25 million active mobile broadband connections in Kenya (KNBS: 2021). This implies that there are opportunities for engaging with public entities on budget processes and monitoring of public funds expenditure such as COVID-19 response and recovery funds

- Legislative bodies at national and county level, where citizens could participate in the open hearings when the bodies are considering the budgets. Citizens could also petition legislative bodies where there are public funds management issues that require intervention by the legislative bodies

³⁸ The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting

Challenges to stakeholder engagement

Citizens face several challenges when seeking or participating in budget process or budget implementation monitoring. Some of the challenges that the study identified are–

- i. Inadequate transparency by government entities in terms of the nature, quality and usability of information shared to the public for purposes of public funds management. The Open Budget Survey, 2019 scored Kenya's transparency in budget process at 50%³⁹.
- ii. Low public participation in the budget process. The Open Budget Survey, 2019 scored Kenya's public participation in budget process at 20% (IBP:2019)
- iii. Inadequate budget oversight. The Open Budget Survey, 2019 scored Kenya's oversight in budget process at 50%.

³⁹ The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting

CURRENT STATE: QUALITATIVE FINDINGS



Figure 3 below provides a summary of country performance on the three parameters.

Figure 3: Open Budget Survey 2019



iv. The Independent Reporting Mechanism (IRM) on Kenya report under Open Government Partnership identified the following challenges experienced in terms of promoting open government and open contracting⁴⁰–

a) Apathy towards corruption due to governments in ability to effectively tackle corruption. This has the potential to reduce citizen engagement in public financial management processes

b) Limited proactive disclosure by State entities
c) Poor record keeping by government

Limited public participation which may be due to costs to reach venues for public participation, limited technical capacity to engage in policy dialogue in some policy issues lack of sufficient information, challenges in aggregating public opinion and lack of government commitment that public opinion and comments will be taken into consideration

⁴⁰ The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.

3.6 Citizen engagement and voice of marginalized groups

The research study held several focus group discussions with women, youth and Persons with Disabilities (PLWDs) in all the seven counties of Nairobi, Nyandarua, Vihiga, Kwale, Makueni, Turkana and Garissa. Overall, these groups faced the same challenges experienced by community members as discussed in this report (next section) but there are some issues that were peculiar to these groups, the most distinct of which are highlighted herein.

3.6.1 Women

Generally, the existing mechanisms for women's involvement in COVID 19 response and recovery are in adequate. In Garissa, the main concern that women raised was the lack of specific mechanisms to address the increased cases of gender based violence across the county. Cases of young school going girls married off and the practice of FGM were rampant and widespread. Equally, many women had lost their jobs as a result of the pandemic.

In Nairobi, some women groups reported to have been involved by Community Health Assistants in creating community awareness about COVID-19 health measures as indicated by one of the FGD participants.



"As community health workers, we used to go door to door sensitizing people on Covid-19 safety measures like washing of hands and use of soaps. We were consulted for these services by the Community Health Assistant who happens to be the government representative employed on health matters in the community".

TREASURER, HARVEST OF BLESSING

In Kwale, women reported that the local administration regularly informed them about the government plans about cash transfer programme, relief food for vulnerable members of the community, curfew, and closure of schools. However, none were involved in budget planning and implementation of said programmes.



CURRENT STATE: QUALITATIVE FINDINGS

In Garissa, women were concerned about the increased cases of misappropriation of COVID 19 funds. This affected the delivery of health services as there was lack of proper health equipment in health facilities such as ventilators, ICU beds, and hospital beddings. Also, there was inadequate staffing after workers went on strike during the pandemic period leaving patients in hospital beds unattended to. In Kwale, women felt that there was lack of transparency in the implementation of government programmes aimed to cushion women against the COVID -19 pandemic. In particular, the food distribution and cash transfers were biased against women from up country. The local administration officials applied nepotism in the entire programme implementation only benefiting members of their immediate and extended families and friends as captured by the participants.



"Village Chairmen were the key persons in food distribution at the village level. They identified people selectively and not on vulnerability basis. The Kazi Mtaani programme for instance, the well-connected families had their sons and daughters working on the program while the needy families were left unattended".

KWALE FGD PARTICIPANT

In Makueni, women were concerned about security and the high cost of health care. In Nairobi, women reported their inability to access vaccines due to inequality and corruption in the local vaccine programmes.

With regard to access to information related to COVID 19 response and recovery specifically, on emergency contracting and budgets and audits

from any government institution, women found it difficult to access information. For instance, in Garissa women tried unsuccessfully to obtain information on financial support that the government was providing through the Women Enterprise Fund. Prior to COVID 19 pandemic, the women interviewed in Nairobi used to access information through public participation forums at Muslim Primary School. However, after the pandemic, public participation forums were suspended indefinitely. In Turkana women felt that there was a lot of 'government secrecy' making it difficult to access information. Women in Vihiga had never attempted to access information.

In terms of capacity development, women said that they would require capacity building in different areas. In Garissa, there is need for more women advocating for women and girls' rights. Specifically, on gender based violence to help address violence during the pandemic and be able to provide long term support to survivors through GBV center. In Kwale, women would like to enhance their capacity on matters around the national and county expenditure frameworks, how they operate and stages of participation. Also, would like to better understand how to track COVID-19 funds at both levels of government. Specifically, be sensitized on how to undertake social audits on the projects that were funded using COVID 19 resources. In Makueni, women would like to be educated on how to access the Women Enterprise Fund. In Turkana, women need to have civic education on governance and transparency to enable women be agents of social change. Capacity development for women could be done through a variety of ways including community engagement forums at the village level, tailor -made workshops targeting women, development and dissemination of IEC materials targeting the semi-literate women, and disseminating of information using women *chamas* (groups).



"On the issues concerning vaccination, there is a general perception that only the wealthy people have access to the vaccination process which makes the other members of the community to feel left out in the program. As CHV members, we are always on the frontline and it will be better if we were to be prioritized in the vaccination program, this is because we are always dealing with different emergency cases that occur within Kawangware. It is therefore appropriate that we all get treated equally".

CHAIRLADY, SONGEA SELF HELP GROUP

3.6.2 Youth

Some of the key issues raised by the youth were as follows:

- There was concurrence among the youth that the existing mechanisms for engagement at the county level were inadequate. In Garissa and Nairobi, the youth felt that there was none adherence to the implementation of the preference and reservations policy during the pandemic which disadvantaged them, women and PLWDs. In Kwale, Makueni, Turkana and Vihiga counties, the youth said they were not involved in COVID 19 response and recovery. In Nairobi, some youth groups were involved in an online petition for IMF not to issue further loans to finance COVID 19 response and recovery. In Nyandarua, the involvement of the youth was minimal, mainly through community health volunteers. The youth reported that their involvement as community health volunteers in disseminating information related to COVID 19 especially on response especially on home based care.
- There were a number of concerns raised by the youth on how counties were managing COVID 19 resources. In Kwale, the youth felt that they were never consulted by the county during the process of funds allocation and utilization. In Makueni, the youth said that there was no proper application of the procurement guidelines in contracting suppliers for PPEs. Also, the youth have never been allowed to interrogate the use of the funds allocated for the pandemic. In Nairobi, the youth felt that there was lack of accountability of funds exemplified by the COVID 19 millionaires expose. The presidential directive on investigations did not yield any results. In Nyandarua, the youth reported that there was inequality in the manner in which resources related to COVID 19 had not been shared. They felt that county resources were directed to areas which appeared to be inhabited by people who were more influential and especially in town leaving out the rural areas.
- Access to information for youth remains a challenge in most counties. In Nairobi, the youth felt that information was inaccessible because tenders were published in newspapers yet most youth do not have access to newspapers. In Garissa, county information is largely considered a top secret while in Makueni it was easier for the youth to access information from the County Assembly than the County Executive. In Nyandarua the youth observed that information was made available but the capacity to understand the whole process of contracting and procurement was the major challenge. Most of the information related to COVID 19 was made available through Public Health Officers and area Chief. However, the office of Ward Administrator has information that never got to people due to lack public participation. The youth are at times advised to get the information from the county website yet electricity and internet bundles are the major hindrances coupled with the fact that they lacked of smart phones. The youth further observed that due to their low economic status, they were only keen on accessing information which would otherwise not benefit them directly as individuals.



In Vihiga, the youth had never sought any information and feel left out of the county affairs. One youth participant observed as follows:



"We (youth) think that trying to access information from government offices is a waste of time, no positive response will be given and that no officer would be willing to give such information. We also fear poor reception at such offices if we go seeking the information. We feel that we may be misunderstood to be investigators."

FGD PARTICIPANT VIHIGA

To address some of the capacity challenges, the youth in Garissa County felt that there was need for a structured engagement and a platform that brings civil society sector, women and youth involved in health for capacity development, knowledge building and information exchange. In Kwale, youth are keen on enhancing their knowledge and skills on how to access information especially on COVID-19 related funds and how to undertake budget tracking. In Makueni, the youth are keen on capacity strengthening on social audit. In Nyandarua, the youth would like to engage in public participation through *barazas* (village meetings) and be provided with simplified information about contracting and procurement as well as budgets and audits issues. Public participation would enhance their capacity and renew their interest in accessing information.



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lack of public participation and consultations. In Kwale, only a small section of PLWDs benefitted from the cash transfer and food distribution programmes. There were cases of discrimination in the process of distribution of the relief items and funds. For instance, the village chairmen who were responsible for identifying PLWD populations in Kwale registered mainly members of their families, friends and relatives leaving out deserving persons. In Nairobi, PLWDs reported that they were not considered under the tenders advertised under preferential reservations guidelines with respect to PLWDs.

Access to information for PLWDs was a challenge. In Nyandarua, PLWDs who rely on others for daily living (through formal support by service providers or informal support by relatives/friends) find themselves without support due to movement restrictions and physical distancing measures and were not well informed on COVID-19 resource allocation and use since the information was not systematically communicated nor disseminated in accessible formats and means to reach all persons with disabilities. Similarly, in Nairobi, PLWDs observed that information was inaccessible to persons living with physical disabilities. There were no facilities for PLWDs in public spaces.

To address the challenges, PLWDs observed that there is need to support their awareness programmes focusing on COVID funds accountability, skills on understanding monitoring how resources allocation is done at the sub-county level, access to information and how to access funds under the preference and reservation. There is need to advocate for better representation of PLWDs in county committees and boards on emergency funds.

These challenges could be addressed by county governments putting in place PLWD mainstreaming policy; and liaise with the county office of the National Council of Persons with Disability to provide a workable framework to address the needs of the PLWDs.

The capacity development for youth could be achieved through a variety of channels including; supporting community youth groups to undertake civic education for the general public on COVID response and recovery, and to sensitize the public on participatory budgeting and audit of public funds.

3.6.3 Persons living with disabilities

PLWDs strongly felt that there were no mechanisms for their involvement in COVID 19 response and recovery at county level.

PLWDs were equally concerned about how inequitably COVID 19 resources were allocated and utilized. In Garissa, the county government did not factor the needs of PLWDs in budget allocation and if so, they were not aware for

3.7 Stakeholder mapping

The study identified some key stakeholders who would be instrumental in use of the output of the study in relation to having interest,

influencing or informing interventions in open contracting, emergency contracting and generally management of COVID-19 response and recovery funds. The list of stakeholders is as highlighted below.

Table 8: Stakeholder matrix

Stakeholder		Interest, need and use of information related to open contracting and emergency on Covid–19 response and recovery funds
	Public Entities	
1	<ul style="list-style-type: none">Public Procurement Regulatory AuthorityNational TreasuryOffice of the Controller of Budget	<ul style="list-style-type: none">Oversight over open contracting standards and general accountability on public procurement lawsDevelopment of appropriate guidelines for open contractingReview and update of PPIP portal and maintaining it as a user-friendly systemPromote and facilitate the integration of PPIP to open contracting portals at the county level
2	<ul style="list-style-type: none">Open Government Partnership National Steering Committee and Secretariat that is hosted in the Office of Deputy PresidentCommission on Administration of Justice (CAJ)	<ul style="list-style-type: none">Facilitation in stakeholder dialogue and engagement on open contractingChampioning public sector reforms to enhance open contracting and transparent budget process
3	Ministry of Health	<ul style="list-style-type: none">Guide the management and use of Covid-19 response and recovery fundsBroaden and deepen public participation in its policy processes
4	Ethics and Anti-Corruption Commission	<ul style="list-style-type: none">Enforcement of ethical standards in relation to public funds management
5	Covid–19 Emergency Response Fund	<ul style="list-style-type: none">Capacity building on funds managementChampioning public participation accountability and transparency in funds management
	Civil Society Organizations	
1	Hivos, IEA	<ul style="list-style-type: none">Capacity building on funds management oversightChampioning public participation accountability and transparency in funds managementAdvocacy on compliance with open contracting standards and principlesCapacity building on ordinary procurement and emergency procurement legal framework in Kenya, global benchmarks and better practices
2	Katiba Institute	
3	Transparency International–Kenya	
4	Mzalendo Institute	
5	The Institute for Social Accountability (TISA)	
6	National Tax Payers Association	
7	International Budget Partnership	
8	Development gateway, Article 19, Open Institute, ICJ, LDRI, ECONeWS, Open Institute	
	Development Partners and Other donors	
1	European Union	Oversight over loans and grants agreement standards especially on public procurement related to Covid–19 response and recovery funds that they provided to the Government of Kenya Development partnership on transparency and accountability over COVID 19 funds allocation and utilization
2	DANIDA	
3	Royal Netherlands Embassy	
4	World Bank	
5	GIZ	Partnership on Open Contracting

4.0 Findings from Primary Research

This section provides the analysis and interpretation of data collected through structured questionnaires. The data collected from 463 citizens and 29 representatives of infomediary organizations in seven counties was systematically analysed using Excel to allow for descriptive statistics to be made as discussed in hereafter.

4.1 Sample demographics

Gender ratio

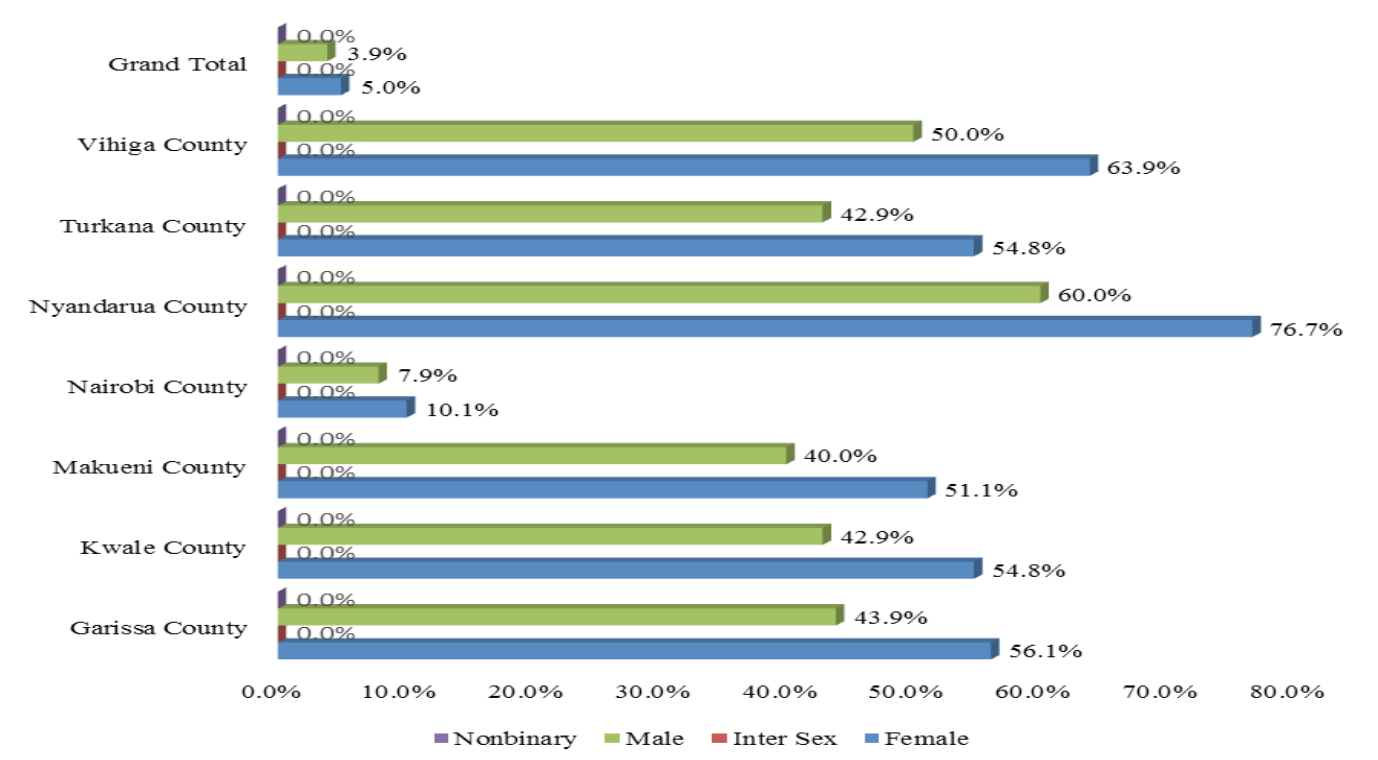
Across all counties, there was a higher percentage of female citizens who participated in the study than men. By proportion, Nyandarua had the highest percentage of female to male ratio, followed closely by Vihiga and Garissa. The lowest ratio of female to male was in Nairobi County as shown in figure 4.

The sampling methodology required that an equal number of men and women be

interviewed. The bias in favour of women may have arisen in cases where women were more readily available to be interviewed than men. Also, given that the survey was predominantly administered online, more women turned up as more women prefer online communication (including participating in surveys) characteristic of the concept of connective selves⁴¹.

⁴¹ William G. Smith, Does Gender Influence Online Survey Participation? June, 2008, <https://files.eric.ed.gov/fulltext/ED501717.pdf>

Figure 4: Gender ratio across counties



Age of respondents

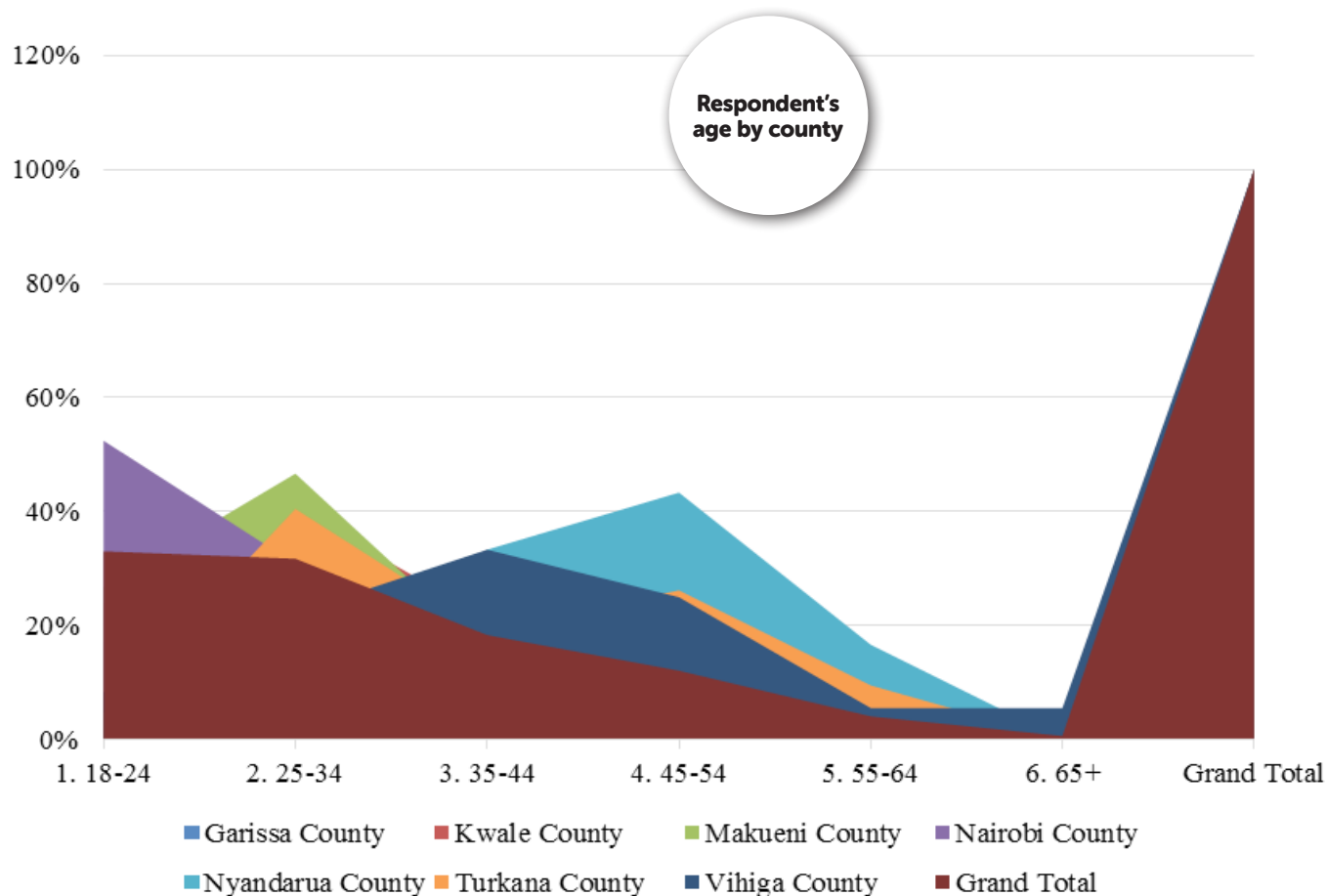
The research found that the top 3 counties that had a majority of youth between ages 18 to 34 were Nairobi (83%), Makueni (74%) and Kwale (64%). The least were Nyandarua (7%) and Vihiga (30%).

These findings are consistent with 2019

population Census data which indicate that the population pyramid for urban areas such as Nairobi have a majority of their population concentrated between ages 20 and 34 and a high growth trajectory of youthful population in rural counties⁴². The significance for future interventions is the need to target the youth.

42 <https://kenyanwallstreet.com/census-2019-datashows-kenya-has-a-youthful-rural-population/>

Figure 5: Representation of the sample by age



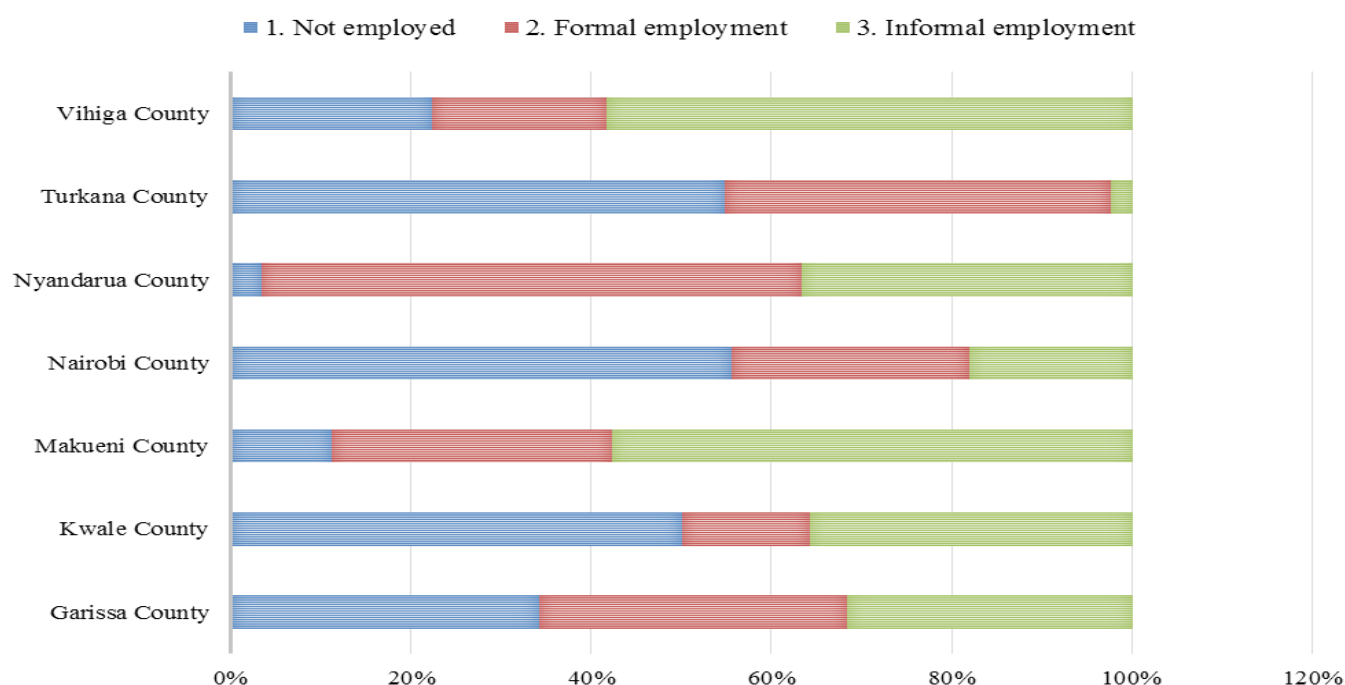
Employment status

Across the counties (Figure 5), Nairobi (56%),

Turkana (55%) and Kwale (50%) had more citizens in the unemployment category than Nyandarua, Makueni, Vihiga and Garissa. In all the counties, majority of the citizens were in

formal employment except for Kwale, Makueni and Vihiga.

Figure 6: Employment status distribution by counties



Level of education

Table 9: presents the education background of the citizens interviewed across the counties. Garissa County had the majority of citizens (63.6%) without any formal education while Nairobi County had the highest number of citizens with graduate (72.4%) and post graduate (100%) education.

This information is particularly important for use when crafting Information, Education and

Communication (IEC) materials to sensitize citizens on Public Finance Management (PFM) issues, emergency contracting and procurement processes and how to effectively engage with feedback mechanisms. The findings imply that it would be advisable to use simple clear language which may be easily and quickly understood by persons who have never been to school or those who completed primary and secondary school as opposed to those with some form of post-secondary education and university education.

Table 9: Level of education of the respondents across counties

Education Level	Garissa County	Kwale County	Makueni County	Nairobi County	Nyandarua County	Turkana County	Vihiga County	Grand Total
1. Not at all	63.64%	0.00%	0.00%	0.00%	0.00%	36.36%	0.00%	100.00%
2. Primary	14.81%	11.11%	7.41%	7.41%	3.70%	29.63%	25.93%	100.00%
3. Secondary	5.63%	19.72%	14.08%	25.35%	2.82%	8.45%	23.94%	100.00%
4. Post-secondary	3.77%	13.21%	25.47%	25.47%	14.15%	11.32%	6.60%	100.00%
5. University	8.94%	4.47%	2.44%	72.36%	4.88%	4.88%	2.03%	100.00%
6. Post graduate	0.00%	0.00%	0.00%	100.00%	0.00%	0.00%	0.00%	100.00%
Grand Total	8.86%	9.07%	9.72%	49.03%	6.48%	9.07%	7.78%	100.00%

4.2 Access to information

O4C19 project is premised on the fact that promoting transparency and efficient allocation and utilization on COVID 19 is dependent on county and national governments ability to provide open data & actionable information and citizens' capacity to access the information. Both citizens and infomediaries require quality and accessible information if they are to adequately oversight and give feedback on service delivery. The research sought to understand the extent to which citizens exercised their right to information related to COVID 19 response and recovery, especially emergency contracting, budgets and audits from government institutions.

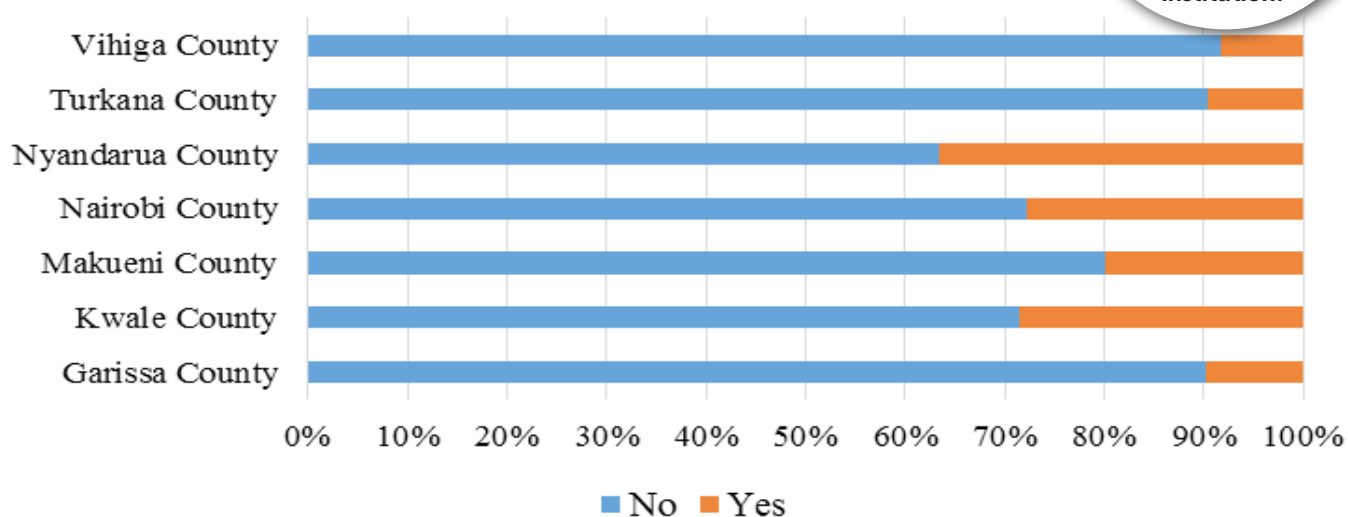
As shown in figure 7, the findings determined that a majority of citizens across the counties had never attempted to access information on COVID 19 emergency contracting, budgets and audits from government institutions. Nyandarua took the lead in the number of citizens (37%) who had attempted to access information, followed by Kwale (29%) and Nairobi with only (28%) stating that they had attempted to access the information. Vihiga, Turkana and Garissa

ranked the lowest. In Nyandarua, Kwale and Nairobi the research found that there was some involvement of citizens in COVID 19 response and recovery efforts at the community level through community health initiatives and social protection programmes hence enabling access to information.

The findings corroborate the focus group discussions held at the county level which suggest that there is either very limited accessible information in the public domain about emergency contracting, budgets and audits. In Garissa women said that 'no government institution wants to come clear' with information particularly on financial support e.g. Women Enterprise Fund. In Turkana, the participants felt that there is so much secrecy when it comes to information about tenders and in Vihiga the participants had never attempted to access information suggesting that citizens are not sufficiently empowered or motivated and to engage with available information on how government institutions are managing the COVID 19 funds allocation and utilization notwithstanding that these are issues affected them directly.

Figure 7: Access to emergency contracting, budgets and audits information

Have you ever attempted to access information related to emergency contracting and procurement, budgets and audits from any government institution?

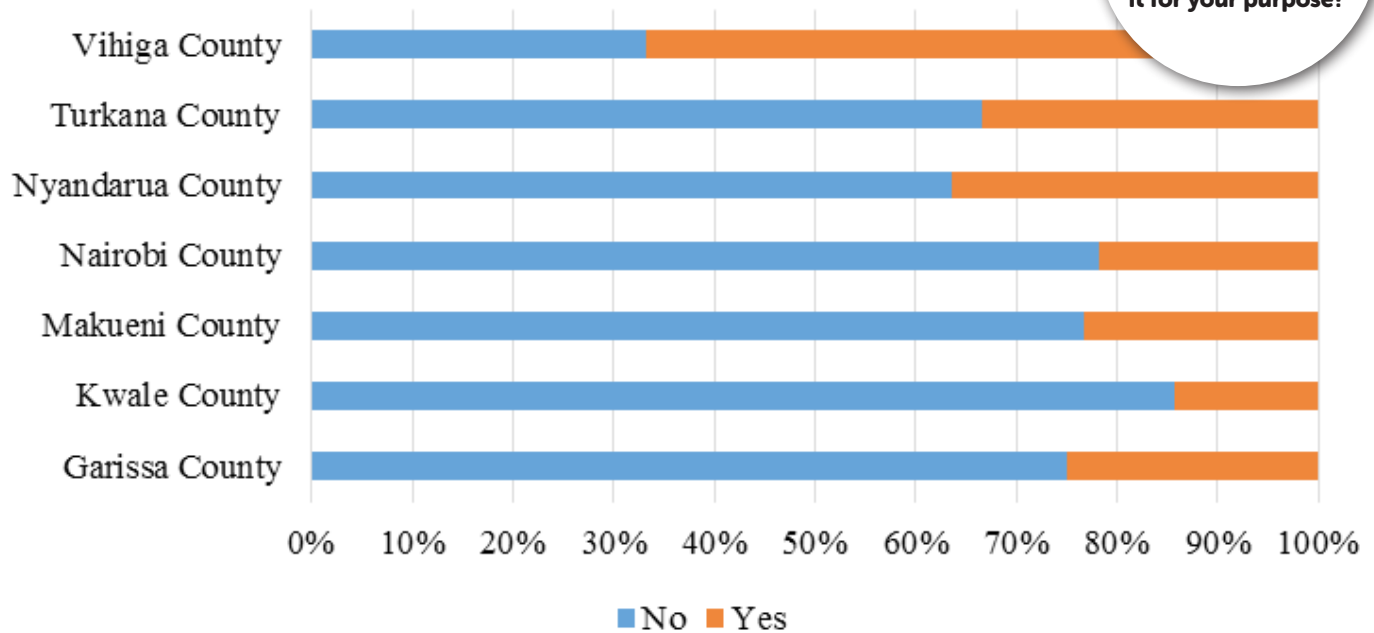


Among the citizens who attempted to access information (figure 8), the research sought to know if the information was published on time. A majority of the citizens across all counties except for Vihiga (67%) did find the information

published by counties to be untimely. This implies that a significant amount of data on emergency contracting, budgets and audits information that is not published in a regular and/or timely manner.

In your opinion, is information published in time for you to be able to use it for your purpose?

Figure 8: Timeliness of information published

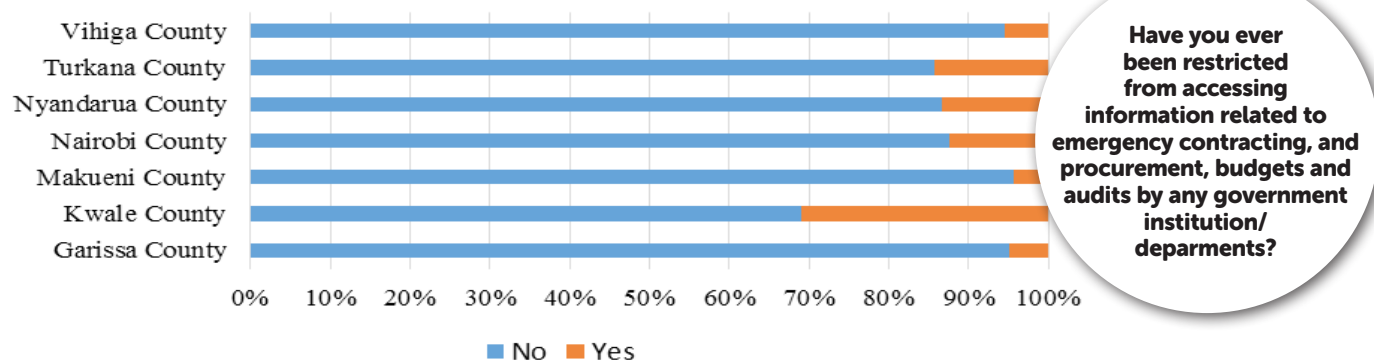


Freedoms and restrictions to access information

Nonetheless, the research found that across all the counties, there was freedom of accessing

information among citizens, with the majority indicating they were not restricted in accessing information related to COVID -19 emergency contracting, budgets and audits.

Figure 9: Level of restriction from accessing information



Have you ever been restricted from accessing information related to emergency contracting, and procurement, budgets and audits by any government institution/ departments?

Reasons for restriction

Among the minority of citizens (12%) who were restricted from accessing information related to COVID 19 emergency contracting, budgets and audits, the research sought to know the reasons for the restrictions. The findings are as presented on table 10.

Table 10: Reasons for restriction

What were the reasons you were given?	frequency	%
(a) Information is confidential	17	27
(b) Make a formal request through a letter	20	32
(c) Make payment for access to information	2	3
(d) No response given	23	37
	62	100

Majority of citizens (37%) said the public officials do not provide responses to information requests.

Among the intermediaries, the research also established that a majority (62%) did not have access to quality information on emergency contracting, budgets and audits produced by any government institution compared to only a few (38%) that had access. The study further sought to find out the ease of accessibility in the information provided by County Governments. The findings are presented in figure 9 below.

Figure 10: Accessibility of information on emergency contracting, budgets and audits

From the research, a total of (59%) responded that the information was not easily accessible while (28%) said the information was not accessible at all. Only 10% of the respondents said the information was accessible. The remaining 3% did not know where to access the information. These findings confirm the limited availability of emergency contracting, budget and audit information to the public. Where this information is available, then the specific information was minimal. Also, they confirm the numerous challenges that intermediaries have faced in requesting for information under article 25 of the Constitution including the lack of response to requests for information, weak enforcement of the Access to Information Act and the lack of regulations to guide the manner and form on which requests to access information held by government institutions can be made, and the measures to be taken by government institutions to facilitate access to the information.

Access to information by sex and education background

The research sought to determine if there were any social and personal factors such as gender and educational background influenced citizen's access to information on COVID 19 emergency contracting, budgets and audits from government institutions. As shown in figure 11, the influence was minimal. At the level of those who did not have education at all, more females (10%) had tried to access information than males (0%). Similarly, at primary level more females (5%) than males (0%) had tried to access information. At the levels of Secondary (females 11%; males 14%) Post-secondary (females 7%; males 7%) and university (females 11%; males 10%) there is an almost parity in access to information for both sexes.

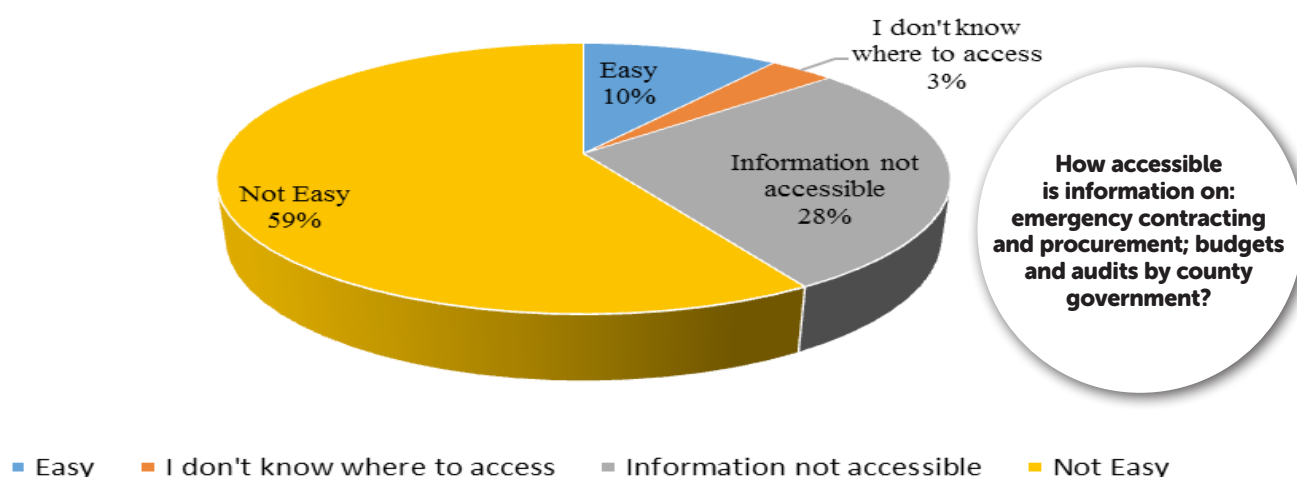
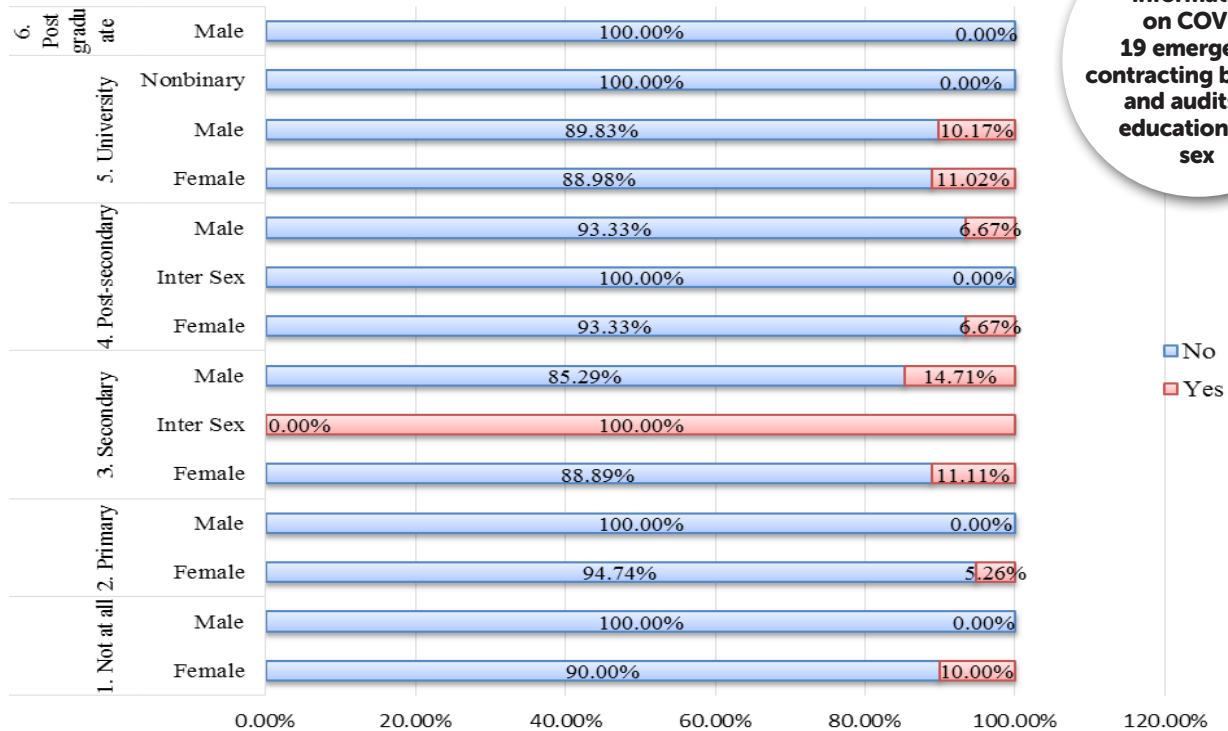
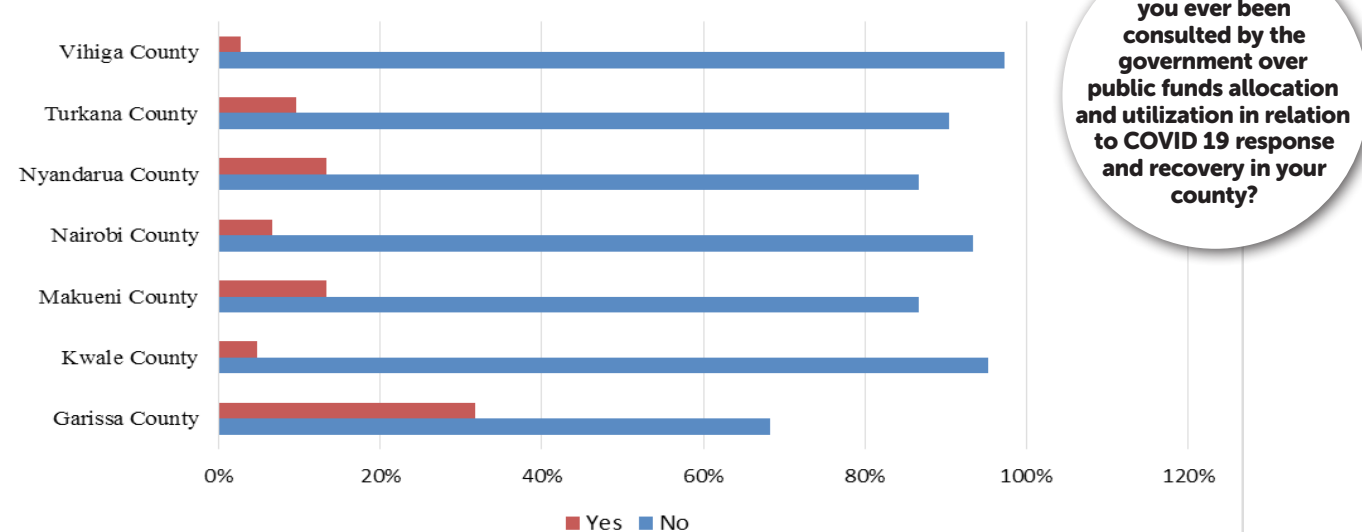


Figure 11 Access to information by sex and education background

4.3 Citizen engagement and oversight

Citizen engagement in COVID 19 funds allocation and use (specifically on emergency contracting, procurement and budgets) is still very limited with majority of the citizens at county level responding that they have never been consulted by the County Governments in the allocation and utilization of funds, as presented in figure 12 below.

Figure 12: Citizen engagement by County Governments

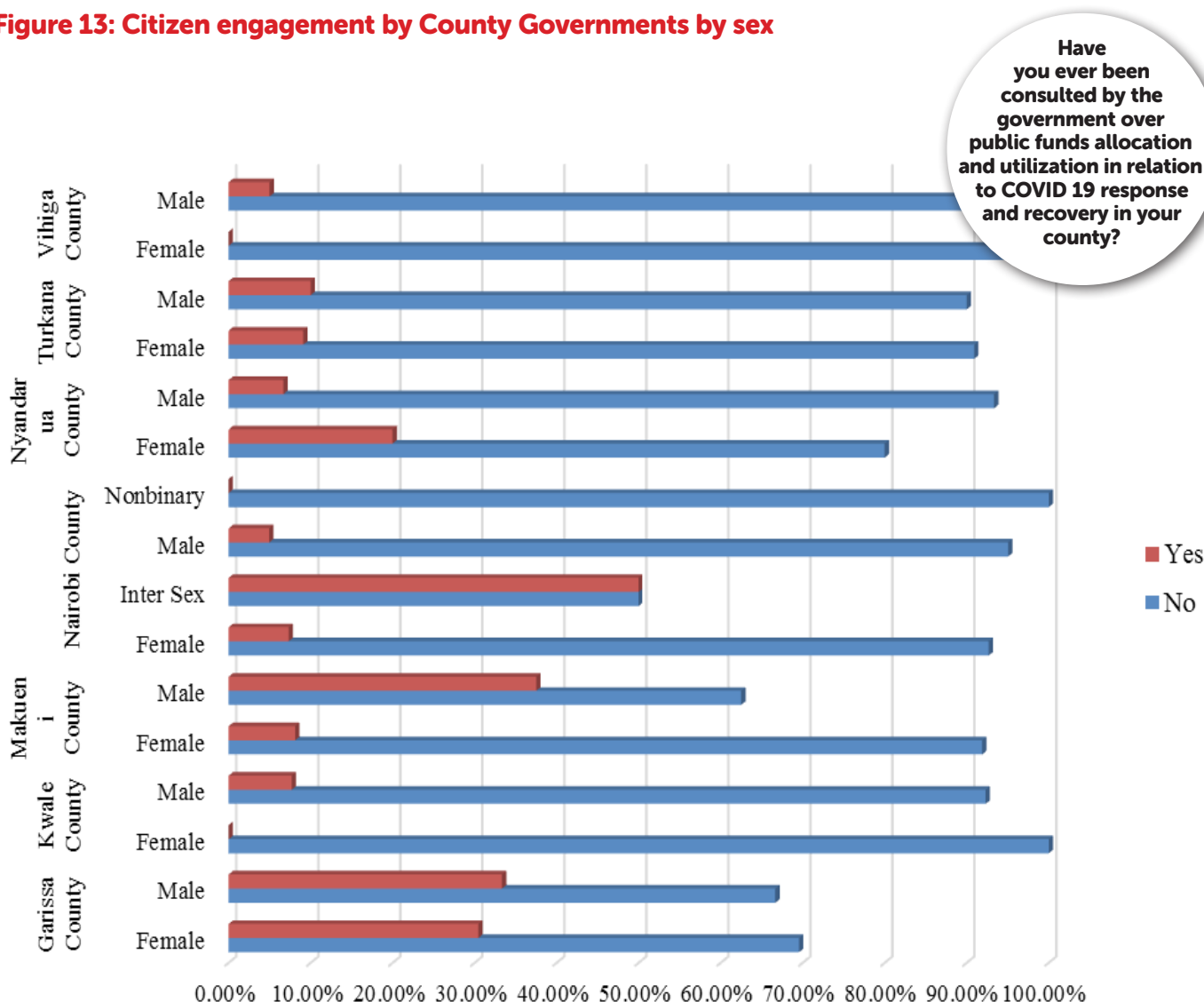
FINDINGS FROM PRIMARY RESEARCH

Across the counties, Vihiga County had the highest percentage of respondents (97) who reported that the sub-national government did not consult with them on allocation and use of COVID 19 funds, followed by Kwale County (93%) and Garissa County had the least (68%). The study found that the County Government of Vihiga coordinates public participation in county development through the department of public service, administration and coordination of county affairs within the recently enacted 'The Vihiga County Public Participation and Civic Engagement Act 2020' yet the public is yet to be sensitized about the new legislative framework. In Garissa, the county government has established Ward Development and Planning Committees to

lead community engagement programs without a framework to anchor citizen participation. Like a majority of the counties, Kwale County has laws on public participation. However, both county and the national governments have yet to put in place specific substantive regulations on conducting citizen engagement on COVID 19 funding allocation and use and specifically on emergency contracting, budgeting and audit process.

Analysis by sex reveals that there are more females than males that were consulted by the County Governments in the allocation and utilization of funds across all the 7 counties as shown below.

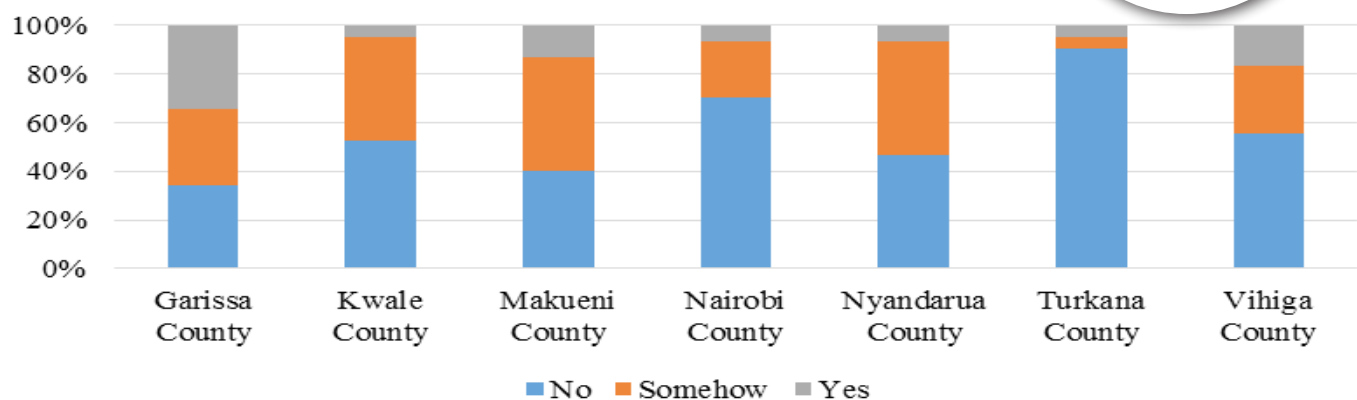
Figure 13: Citizen engagement by County Governments by sex



Moreover, the research found that a majority of citizens (62%) across the counties felt their governments were not committed to meaningful citizen engagement in COVID 19 funding allocation and utilization (as indicated in figure 14 below). Turkana took the lead in the number of citizens (90%) who felt that their

government was not committed, followed by Nairobi (70%) and Vihiga (56%) stating that their county governments were not committed to meaningful citizen engagement. In Makueni (47%) and Nyandarua (47%), citizens felt that their county governments were somehow committed.

Figure 14: Meaningful citizen engagement by county governments



The perceived low ratings on citizen engagement by county government could be that, after the outbreak of COVID-19 in the first quarter of 2020, both national and sub-national governments were operating in *emergency mode* devoid of effective, agile, coordinated, consultative approaches. Citizen engagement in COVID-19 funds allocation and utilization was notably absent.

Secondly, where citizen engagement was held, Ministry of Health protocols on social distancing limited the numbers of persons who could participate in forums hence ineffective citizen engagement. COVID-19 also exposed the existing weaknesses of counties in not investing in digital participation platforms including online platforms like Zoom, google meet, and facebook live and skype. Most county websites were never designed to provide much information to enable meaningful citizen engagement.

Thirdly, although several county governments transformed citizen engagement meetings and face-to-face deliberation into virtual online settings as alternative platforms for participation,

this excluded the poor and vulnerable that did not have the same level of access to the internet and needed technologies. Women and girls were particularly disproportionately affected as well as older persons, youth, and persons with disabilities, rural populations and indigenous peoples.

The research findings reflect the increased mistrust and waning confidence exhibited within the different citizen engagement formations that existed both at national and county level even before COVID-19 pandemic, and the need to build this confidence and trust between citizens and their government.

Platforms used for citizen engagement on allocation and use of COVID 19 resources

The research established that social media (52%) is the main platform destination for citizen engagement across all counties except Vihiga (0%); it is followed by Barazas at (15%).

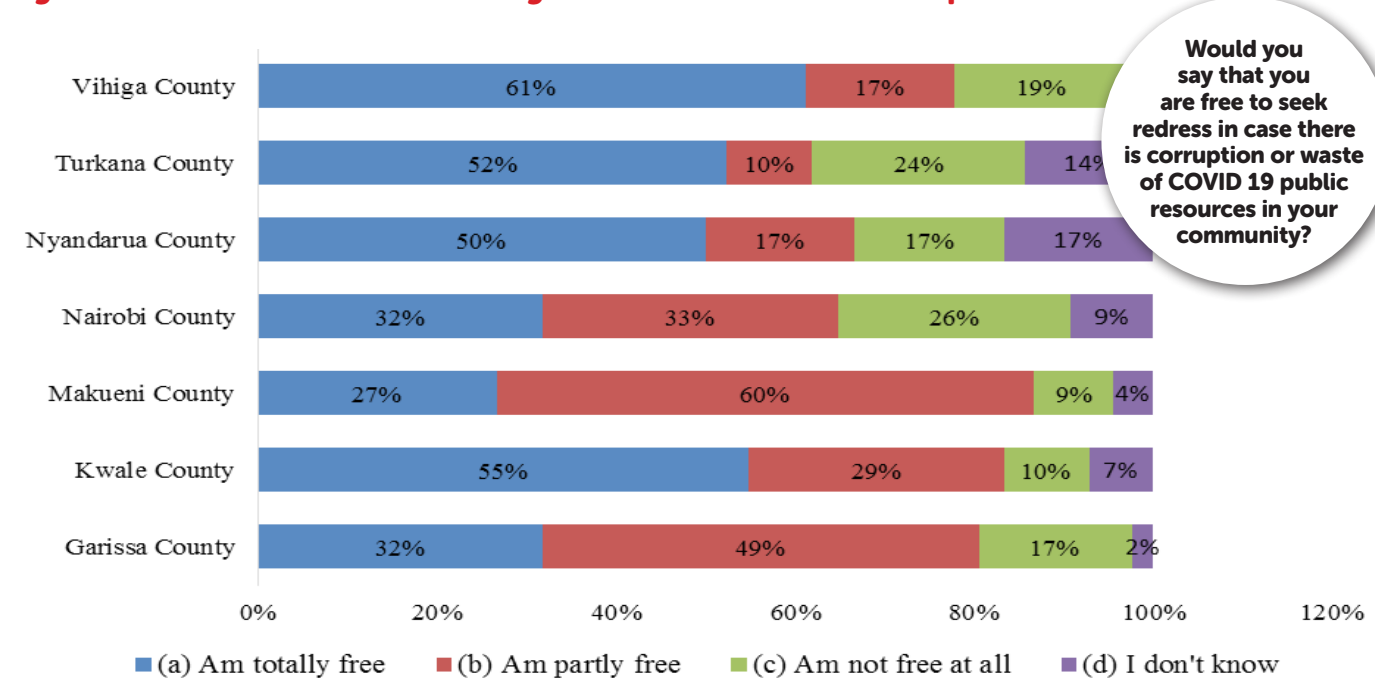
Table 11: Platforms for citizen engagement

Education Level	Social media	Barazas	County websites	Ward meetings	SMS	County office/meetings
Garissa County	42%	26%	16%	5%	0%	11%
Kwale County	50%	0%	0%	33%	17%	0%
Makueni County	71%	0%	7%	7%	7%	7%
Nairobi County	48%	15%	15%	13%	8%	3%
Nyandarua County	50%	13%	38%	0%	0%	0%
Turkana County	64%	18%	0%	9%	0%	9%
Vihiga County	0%	100%	0%	0%	0%	0%
Grand Total	52%	15%	13%	10%	5%	5%

The findings indicate that in the wake of COVID 19 pandemic most public institutions including counties resorted to social media platforms as a mechanism for citizen engagement. Although social media platforms are easily accessible particularly to the savvy and youthful population, the threat of misinformation or 'fake news' appears to grow every day, as beliefs, opinions and facts are all discussed together, making it difficult for a non-savvy consumer to distinguish them apart.

Citizen oversight on corruption and/or waste of COVID 19 public resources

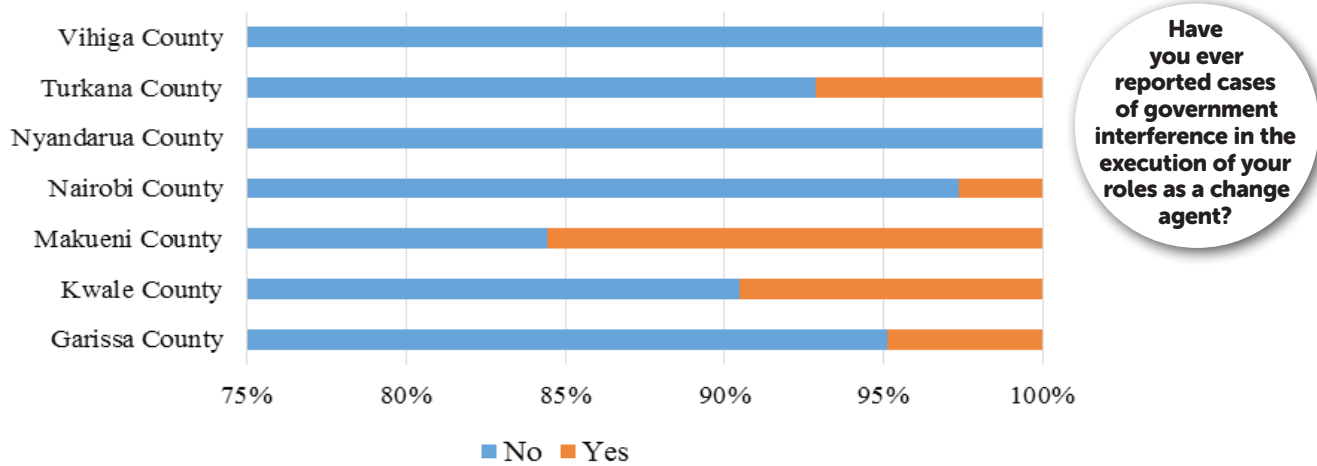
The research investigated whether citizens were free to seek redress in cases where there is corruption or waste of COVID 19 public resources. Across the counties, citizens in Vihiga (61%) and Kwale (55%) were freer to seek redress in case there is corruption or waste of resources than the rest of the counties.

Figure 15: Level of freedom in seeking redress where there is corruption

FINDINGS FROM PRIMARY RESEARCH

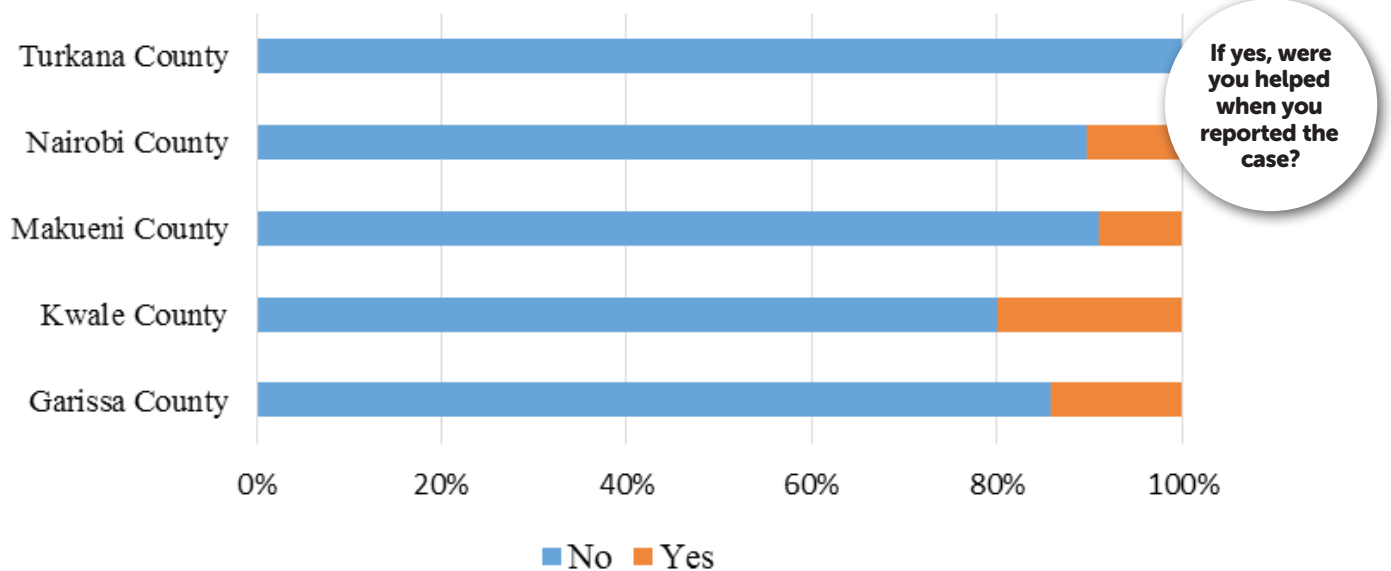
The research further sought to know whether respondents had ever reported cases of government interference in the execution of citizen monitoring and oversight roles (change agent) and whether their concerns were

addressed. Only 5% responded that have actually reported the cases of interference across all the counties. None had reported in Nyandarua and Vihiga.



Out of those who reported, 11% had action taken as a result of the report across all counties as shown below. No single action had been taken in Turkana.

Figure 16: Level of reporting on cases of government interference in citizen oversight



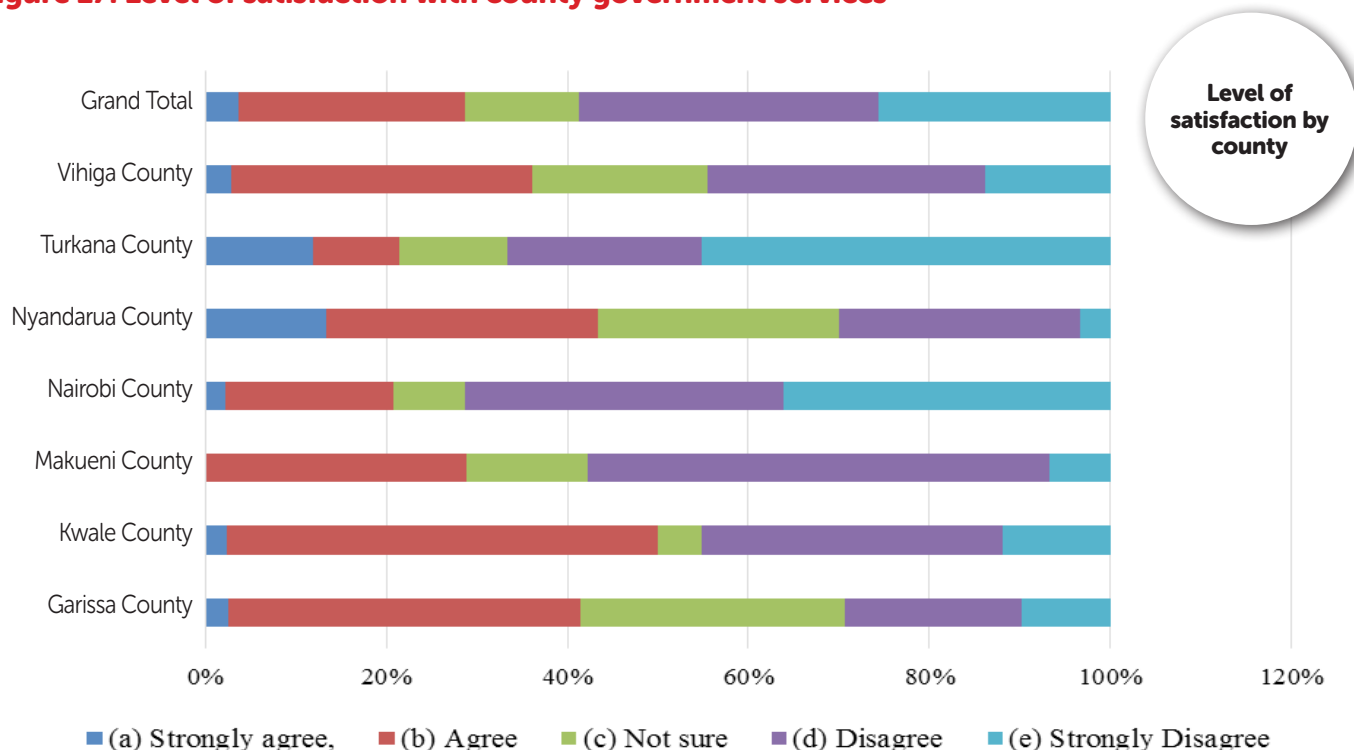
4.4 Government responsiveness and service delivery

The O4C19 project goal is to contribute to a transparent and efficient use of public resources and access to services in light of COVID-19 crisis in Kenya. Improvement in service delivery at county level was measured through citizen's satisfaction with services provided by the sampled County Governments.

The survey sought to understand the level to

which citizens were satisfied with the services being provided by government. The question asked whether they strongly agreed, just agreed, not sure, disagreed or strongly disagreed with the statement: "I am satisfied that there has been improvement with quality of services offered by county government in light of COVID 19 crisis". Responses are graphically presented in figure 18 below.

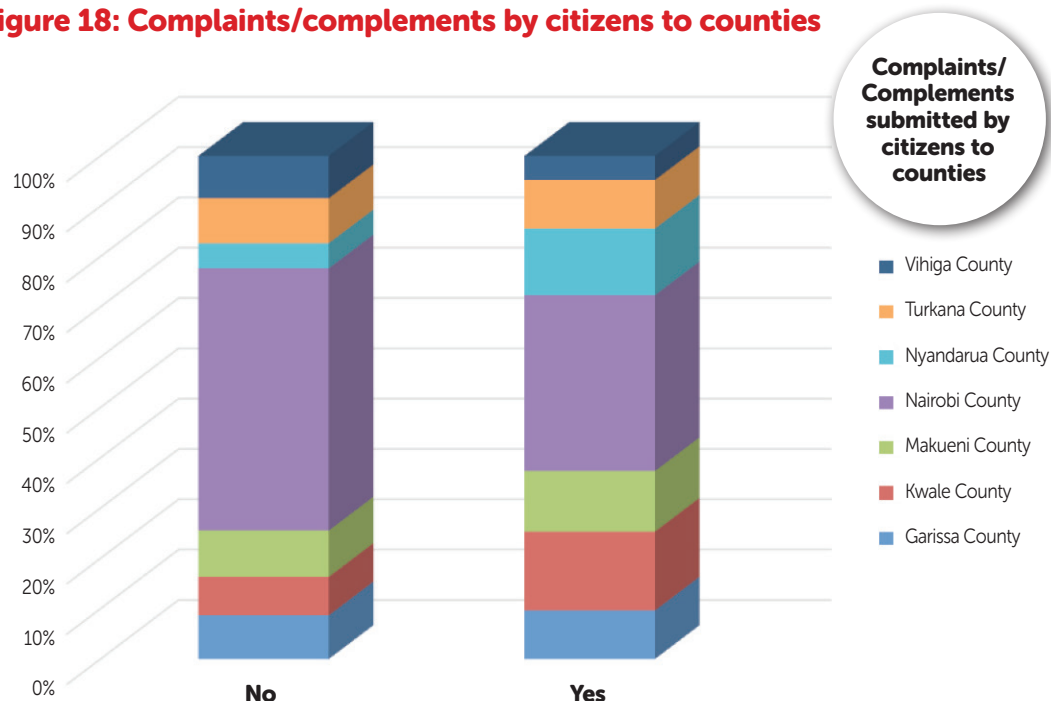
Figure 17: Level of satisfaction with county government services



A majority of respondents were dissatisfied with service delivery while only a few agreed that there had been improvement with quality of services offered by county government in light of COVID 19 crisis. In Nairobi County, the level of satisfaction was the lowest at 71 percent while the highest in Garissa (30%) and Nyandarua (30%).

Citizen feedback in relation to allocation and/ or utilization of COVID 19 resources

Despite the high level of dissatisfaction in service delivery, only a few of respondents submitted complaints or complements to the county governments in relation to the allocation and/ or utilization of COVID 19 resources. A majority did not. As shown in figure 19, Nairobi County registered the highest complaints (34%) while Vihiga County had the least (4.8%)

Figure 18: Complaints/complements by citizens to counties**Reasons for submitting complaints:**

Among the respondents who submitted the complaints, the research sought to know the

reasons for the complaints submitted in relation to the allocation and/ or utilization of COVID 19 resources. The findings are as presented on table 12.

Table 12: Nature of complaints submitted to counties

Would you like to specify what the complaint in relation to the allocation and utilization of COVID 19 resources was about?	Frequency	%
(a) COVID 19 resources did not reach the main beneficiaries;	26	32
(b) Misappropriation of funds through irregular procurement;	30	37
(c) lack of information regarding COVID 19 resource allocation and utilization	36	44
(d) Other concerns	15	18

Majority of this category (44%) said the county government does not provide adequate information regarding how COVID 19 resources are allocated and utilized in the regions where they are located. This was followed by alleged misappropriation of funds through irregular procurement (37%) and the fact that COVID 19 resources did not reach the intended beneficiaries (32%). Other concerns raised included corruption in the administering vaccines, lack of transparency in the budget making process, discrimination in the distribution of food meant for the vulnerable and the government's inability to support learning institutions to provide on line classes.

Complaint platforms

The survey revealed that Ward Administrators' offices are most preferred platforms for submitting complaints over COVID 19 funds allocation and utilization and service delivery. As indicated in Table 11, majority of the respondents (34%) preferred using Ward Administrators due to their proximity to their homes. This was followed by Social media/online platforms. This may imply that there is need for O4C19 project engage with these platforms in order to strengthen citizen engagement for purposes of improving transparency in funds management and service delivery.

Table 13: Platforms for submission of complaints

Where did you submit the complaint?	Frequency	%
(a) National government ministry/department	8	9%
(b) County executive department	16	18%
(c) County Assembly	9	10%
(d) Ward Administrator Office	31	34%
(e) Social Media/Online	20	22%
(f) Public/Opinion Leaders	4	4%
(g) Covid19 Response Committee	2	2%
(h) No Submission	1	1%
TOTAL	91	100%

The research also sought to know whether concerns/complaints raised by respondents had been resolved. Findings indicated that only 25 percent of respondents' concerns/complaints raised had been addressed. A majority of the respondents who raised concerns/complaints raised (75%) these were not addressed appropriately. Across the counties, Makueni had the highest number (30%) of complaints resolved, while Turkana and Kwale had the least (4% respectively) as shown in figure 20.

The influence of citizen engagement influence on service delivery

The research found a strong relationship between citizen engagement by government in public funds allocation and utilization and levels of satisfaction with quality of services offered by county government in light of COVID 19 crisis. It is at the highest level of government consultation, that citizens experienced the highest level of satisfaction. As shown in figure 21, a majority (58%) of the respondents that had been consulted were actually satisfied with the quality of services offered by the County Governments. Where there was inadequate consultation, the level of satisfaction was low. This implies that there need for citizens to engage more with the national and county governments in COVID 19 funds allocation and utilization in order to improve service delivery

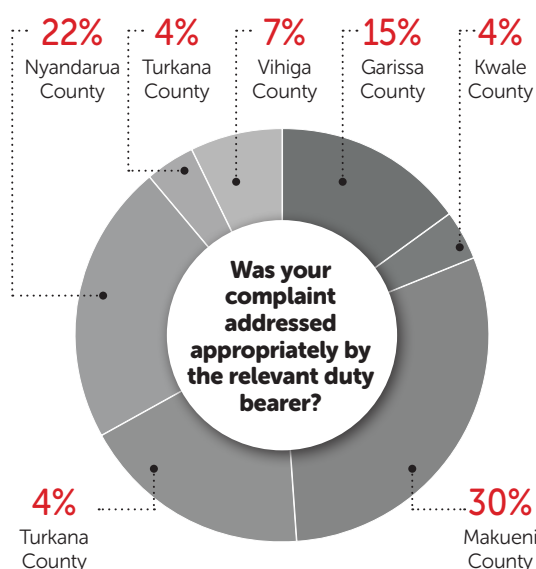
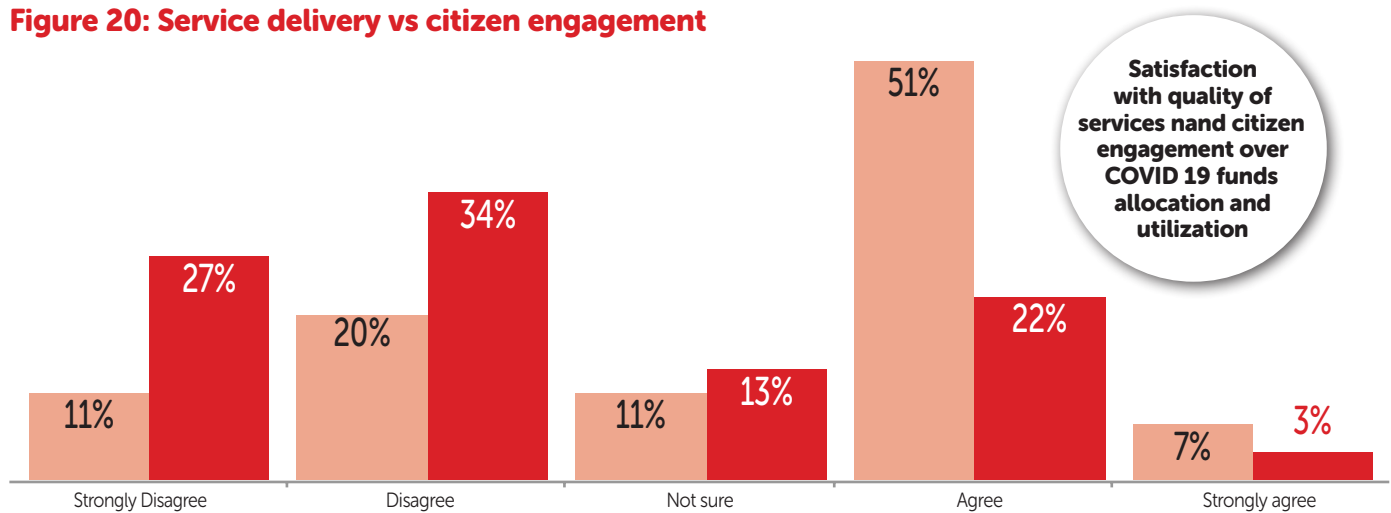
Figure 19: Extent to which citizen complaints are addressed by counties

Figure 20: Service delivery vs citizen engagement

4.5 Capacity development

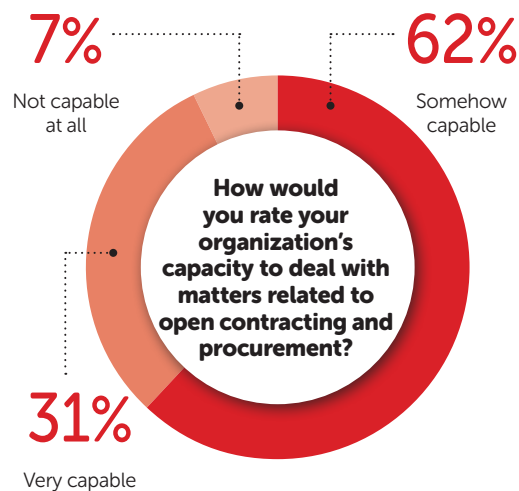
Capacity challenges

The research found that majority of the infomediaries (66%) are involved in initiatives for advancing transparency, mostly undertaking advocacy work geared towards better allocation and utilization of COVID 19 resources. However, there was limited capacity to engage specifically with matters related to open contracting and procurement as shown in figure 22.

largely found to be around advocacy and networking on COVID 19 response and recovery (48%) and monitoring and oversight of COVID 19 public funds allocation and use (24%) as indicated in the table below:

Table 14: Key infomediary capacity priority areas

What are your organization's key capacity priority areas that you perceive?	Response Frequency	%
(a) Monitoring and oversight of COVID 19 public funds allocation and use;	10	24%
(b) COVID 19 emergency contracting and procurement approaches;	4	10%
(c) Budgets, expenditure accountability and audit process on COVID 19 funds allocation and utilization	8	19%
(d) Advocacy and networking on COVID 19 response and recovery	20	48%
TOTAL	42	100%

Figure 21: Informediary capacity in open contracting

A majority of the infomediaries (62%) are not adequately equipped with knowledge and skills on open contracting while (31%) indicated that they had the capacity.

Key infomediary capacity priority areas were

The low prioritization of capacity development on COVID 19 emergency contracting and procurement approaches (10%) and Budgets, expenditure accountability and audit process on COVID 19 funds allocation and utilization (19%) is because of the limited awareness and appreciation of the value of these technical areas in advancing transparency.

Capacity recommendations:

Majority preferred that these capacity gaps be addressed through training or mentorship (44%) or through additional funding (38%). These findings show that intermediaries need capacity in the following areas:

- Advocacy and networking on COVID 19 response and recovery; Monitoring and oversight of COVID 19 public funds allocation and use – potentially including monitoring COVID 19 emergency contracting and procurement approaches; and Budgets, expenditure accountability and audit process as well as financial support.
- In order to improve the quality of citizen participation and deliberation on COVID – 19 funding allocation and utilization; there is need to building capacity of middle level government officials e.g. ward administrators in budget and open contracting engagement
- Support counties to develop citizen engagement platforms that will provide a framework to accelerate the public's resolution of complaints and implement civic education campaign to sensitize the public on the existence and use of the platforms.

4.6 Baseline and indicator data

The purpose of the research was to, among others; obtain baseline data on the key indicators of the O4C19 project. In this sub-section, the

study discusses the proposed new indicators at the impact (goal) level, the considerations attending their baseline data, and the related baseline data. Baseline status data for all other result areas is summarized in table 2 below.

INDICATOR

#1

Indicator #1: Kenya's score/ranking on governance indices

This impact level indicator will measure Kenya's transparency as a function of the country's entrenchment of a culture of accountability integrity particularly in public finance management. If the country maintains its ranking or improves, the project can take some credit for contributing to such progress. From the several rankings available, the project selected Freedom House's Freedom in the World ranking, and the Mo Ibrahim Index of African Governance (IIAG).

Launched in 1973, the Freedom House ranking is one of the oldest with reliable annual data. It uses a two-tiered system, consisting of scores and status. Every year, each country and territory is assigned two numerical ratings – from 0 to 4 – for political rights and civil liberties, with 0 representing the least free and 4 the most free. The two ratings are based on scores assigned to 25 more detailed indicators. The highest overall score that can be awarded for political rights is 40 (or a score of 4) while civil liberties is 60 (or a score of 4). The average of a country or territory's political rights and civil liberties ratings determines whether it is Free, Partly Free, or Not Free. The 2020 Freedom in the World report evaluates the state of freedom in 195 countries and 15 territories during 2019. It found an overall decline in freedom across the world, for the 14th consecutive year, with more than half of the countries suffering declines. *Kenya, which the report describes as having a vibrant media and civil society is among countries that suffered a decline, was rated partly free (political rights 19; civil liberties 29).*

INDICATOR

#1

The IIAG, on the other hand, is an initiative of the Mo Ibrahim Foundation established in 2007 to provide an annual assessment of the quality of governance in African countries. It is an annually published composite index that provides a statistical measure of governance performance in African countries. The IIAG assesses governance provision within four distinct conceptual categories: safety and rule of law; participation and human rights; sustainable economic opportunity; and human development. These categories are made up of 16 sub-categories, consisting of 79 indicators. A score of 100 is the most effective governance performance while a score of 0 is the weakest level of governance performance. Every component of the IIAG is comparable from the year 2010, enabling analysis of national and regional trends over time. The 2020 IIAG, which recognized discrepancies in governance performance amongst African countries, ranked Kenya 14 out of 52 countries, with a score of 58.5. *Under the sub-categories on; a) Accountability and Transparency the country scored 51.6% and was ranked 15; b) Anti-corruption 40.5%/24 and on Perceived accountability of public officials 30.3%/29*

By using the two rankings, the project will overcome Freedom House's focus on civil and political rights and criticism that it is based on Western conceptions of good governance. It also helps to give effect to the concept of an effective state, which is at the heart of African governance

INDICATOR

#2

Indicator #2: % of public rating government(s) services as accessible

This impact-level indicator will measure accessibility of government(s) services to its citizens. While other governance indicators, such as IIAG, can be used to measure access to public services as well, the project will seek to infuse public perception in its measurement of service delivery. In this regard, it will use the bi-annual Afro barometer surveys and Ipsos surveys as a source of data for this indicator. If analysis of the data collected regularly shows an increase in citizens' perception of government service delivery, the project can claim some credit for *influencing* such a positive trend.

Afro barometer is an African-led, non-partisan survey research project that measures citizen attitudes on service delivery and governance, civil society, and other topics. Started in 12 countries in 1999, it has since expanded to 35 African countries in Round 8 (2019-2020). The round 9 surveys are ongoing (2021-2022). A national partner in each country conducts the survey. In Kenya, Afro barometer Round 8 survey was conducted by the University of Nairobi's Institute for Development Studies (IDS) between 28th August and 1st October 2019. It found that a majority of Kenyans (52.5%) perceived a fairly improved basic health services in the country over the previous year. However, a culture of corruption was undermining the provision of services. NB: Data from other survey firms, such as Ipsos Synovate or Infotrack-Harris should be included in future tracking if and when it is available.

Key Result Area	Indicator	Indicator variables	Baseline status
Impact : Transparent and efficient use of public resources and access to services in light of COVID-19 crisis in Kenya	Indicator: Kenya's ranking on governance indices		Ibrahim Index of African Governance (2019): Indices on Accountability & Transparency, No. 15/51.6% Ibrahim Index of African Governance (2019): Indices on Anti-corruption, No. 24/40.5% Ibrahim Index of African Governance (2019): Indices on Perceived accountability of public officials, No. 29/30.3%
			Freedom House (2020): Partly Free (PR:19; CL:29)
	Indicator: % of public rating government public services as accessible		Afro-barometer data. As at 2019, Afrobarometer data indicates that, delivery of health services is slightly above average at 52%.
Outcome 1: CSOs and Community accountability mechanisms' capacities to monitor and provide feedback on COVID-19 spending towards inclusiveness and sustainability enhanced	Indicator : # of informediaries that access information on COVID-19 funds sources and allocations		2021: 11 As of October 2021, data obtained from research indicates that 11 out of 29 informediaries access information on COVID-19 funds sources and allocations
	Indicator: % of targeted informediaries using COVID-19 related data to monitor spending and procurement processes	Monitoring and oversight of COVID 19 funds allocation and use	2021: 21% As at October 2021, data obtained from research indicates that informediaries monitoring spending and procurement process is 21%.
		Speaking out/Advocating for better allocation and utilization of COVID 19 resources	45%
		Dissemination of information on COVID 19 public funds allocation and use	24%
		Participation in citizen forums on allocation and use COVID 19 public funds	3%
	Indicator : # of stories produced by journalists on allocations and use of COVID-19 funds	COVID-19 response funds allocations and expenditure by government entities	2021: 20 As at October 2021, data obtained from research the indicates that 20 stories have been reported
		Public awareness on COVID-19 pandemic	1
		COVID-19 infections rates, cases and deaths	3
		Social and Economic impact of COVID-19 pandemic	6
		Government response to COVID-19 pandemic	2

Output area	Indicator	Baseline status
Outcome 2: County governments progressively adopt open data and proactively disclose COVID-19 emergency contracting and procurement data	Indicator: # of counties that adopt open contracting principles in their procurement policies and processes	2021: 2 As at October 2021, data obtained from research the indicates that Elgeyo Marakwet and Makueni counties are the 2 counties that have adopted OC policies
	Indicator: # of counties with systems in place for collecting procurement data in open contracting standard	2021: 2 As at October 2021, data obtained from research the indicates that Elgeyo Marakwet and Makueni counties are the only 2 counties that have systems for collecting procurement data in OCDS
	Indicator: # of counties that disclose Covid-19 contracts and procurement data	2021:12/47; 9/47 As at October 2021, data obtained from research(PPRA) the indicates that 12/47 county executives and 9/47 county assemblies are disclosing procurement data through PPIP
Outcome 3: Legislative oversight institutions and CSO network capacity for effective public scrutiny of COVID-19 spending strengthened	Indicator: # of CSOs advocating for accountability of public resources allocated to the fight against COVID	2021: 13 As at October 2021, data obtained from research the indicates that 13/29 CSOs are advocating for accountability of public resources
	Indicator: # of reactions recorded and reforms undertaken by government officials in response to issues raised on COVID-19 funds allocations and utilization	2021: 21 As at October 2021, data obtained from research the indicates that 21 reactions have been recorded and / reforms undertaken by government officials in response to issues raised on COVID-19 funds allocations and utilization
Output 1.1: 2 Baseline and analysis reports about the current state of Covid-19 related initiatives, funds allocations, utilization and oversight produced	# of research reports produced on the current state of Covid-19 related funds allocations, utilization and oversight	2021: 3 As at October 2021, data obtained from research the indicates that 3 related external reports have been produced by TI Kenya
Output 1.2: 150 Informediaries (75 CSOs, 75 journalists) use COVID 19 funding allocation and utilization information to oversight and feedback on service delivery	# of informediaries (disaggregated by nature and gender) trained on audit processes for counties	2021: 150 county CSOs²² As at October 2021, there are 150 county CSOs ²² , 25 national CSOs who have been trained as a result of past IEA programme implementation.
Output 2.1: Mapping reports on adoption of the open contracting produced	# of mapping reports assessing the counties' capacity to adopt open contracting	2021: 8 As at October 2021, there were 8 reports assessing the counties' capacity to adopt open contracting undertaken by Hivos and Development Gateway. These were in Nyandarua(2-legal and technical), Nairobi(1-technical), Elgeyo Marakwet(2-legal and technical) and Makueni(2legal and technical)

Output area	Indicator	Baseline status
Output 2.2: 30 county officials trained on open data and OC approach	# of county staff (disaggregate by gender and placement) trained on open data and open contracting approach	2021: 45 senior officials, 23 technical and procurement officials, 30CECs and Chief Officers, 27 directors²³ As at October 2021, there were 45 senior officials, 23 technical and procurement officials, 30CECs and Chief Officers, 27 from Makueni County trained as a result of past Hivos and Development Gateway CO programme implementation
Output 2.3: One (1) Open contracting portal developed	# of Open contracting portals developed	2021: 1 As at October 2021, the Makueni County OC portal had been developed from previous Hivos OC programme implementation
Output 2.4: Strengthened county government mechanisms for proactive disclosure and emergency procurement in COVID-19	# of developed county guidelines on emergency procurement and proactive disclosure of information	2021: 0 As at October 2021, there are none.
Output 3.1: CPAC and PAC capacities for oversight and audit of emergency funds are enhanced	# of CPAC and PAC officials trained on oversight and auditing of emergency funds	2021: 90 MCA's, 20 Members of PAC & PIC of the National Assembly²⁴ As at October 2021, there are 90 MCA's, 20 Members of PAC & PIC of the National Assembly who have been trained as a result of past IEA programme implementation.
	# of annual audit reports analyzed at national and county government	2021: 4 National Government audit reports, 9 County Government audit reports²⁵ As at October 2021, there were 4 National Government audit reports, 9 County Government audit reports analyzed from previous IEA programme
	# of sessions conducted to present findings of analyzed reports to CPAC and parliamentary oversight committees	2021: 3 with National Assembly PAC, 1 with PIC, 9 with CPACs As at October 2021, there were 3 sessions where IEA had made presentations to National Assembly PAC, and 1 session with PIC, and 9 sessions with CPACs
Output 3.2: Intermediaries (CSOs, journalists, citizen networks) raise legitimate integrity and corruption issues related to COVID-19 funds allocations and utilization with national and county officials	# of dialogue meetings convened with law makers and government agencies on accountability of allocated COVID-19 resources	2021: 0 As at October 2021, there are none
	# CSO advocacy coalition meetings convened	2021: 9 (TI Kenya, TISA, KELIN, ICJ, Amnesty, NTA Coalition) As at October 2021, there were 9 coalition meetings under the TI Kenya convened CSO advocacy coalition comprising of TISA, KELIN, ICJ, Amnesty, NTA Coalition)

Summary of key findings from primary research

- There is very limited accessible information in the public domain about; emergency contracting, budgets and audits or in some cases none at all.
- There exists a significant amount of information on emergency contracting, budgets and audits information which is not published by government institutions in a regular and timely manner.
- Moreover, citizens are not sufficiently empowered or motivated and to engage with available information on how government institutions are managing the COVID 19 funds allocation and utilization notwithstanding that these are issues that affected them directly.
- Citizen's access to information on COVID 19 emergency contracting, budgets and audits from government institutions is not significantly influenced by factors such as sex. There is need to design IEC materials that reach the different segments of the public. However paying attention to the levels of education is critical.
- There are no regulations in place yet to guide the manner and form on which citizens can make requests to access information held by government institutions, and regulations on measures to be taken by government institutions to facilitate access to the information. This has significantly impacted the ability of public institutions to respond to requests for information.
- The transformation of citizen engagement meetings and face-to-face deliberation into virtual online settings create alternative opportunities for participation. However, it excludes the poor and vulnerable that may not have the same level of access to the internet and needed technologies. Also, women and girls are particularly disproportionately affected as well as older persons, youth, and persons with disabilities, rural populations and indigenous peoples. Therefore, there is need to ensure that the shift towards digital participation is implemented concurrently with effective mapping of stakeholder needs.
- The sustained low levels of trust and confidence exhibited within the different citizen engagement formations and patterns that existed both at national and county level even before COVID-19 pandemic. Although significant efforts have been undertaken in both levels of government to improve citizen engagement, including development and/ enactment of policies and laws which generously mandates citizens to participate in public affairs, citizens have minimal trust on the fact that appropriate exercise of their civic engagement mandate can indeed yield meaningful dividends in terms of government transparency and efficiency in allocation and utilization use of public resources and access to services in light of COVID-19 crisis in Kenya.
- In the wake of COVID 19 pandemic most public institutions including counties resorted to social media platforms as a mechanism for citizen engagement. Although social media platforms are easily accessible particularly to the savvy and youthful population, the threat of misinformation or "fake news" appears to grow every day, as beliefs, opinions and facts are all discussed together, making it difficult for a non-savvy consumer to distinguish them apart.

5.0 Recommendations

In concluding this report the research identifies key areas of action:

Recommendations:

Hivos and IEA:

1

Design capacity development interventions around advocacy and networking on COVID-19 response and recovery; monitoring and oversight of COVID-19 public funds allocation and utilization – potentially including data driven advocacy for monitoring emergency contracting, budgets, expenditure accountability and audit process. These should target journalists (especially investigative journalists) and members of transparency and accountability civil society organizations and networks.

2

Develop and convene Linking and learning platforms (virtual/blended) on COVID 19 transparency to enhance knowledge exchange and peer learning both at national and county levels.

3

In order to improve the quality of citizen participation and deliberation on COVID – 19 funding allocation and utilization; the project should build the capacity of middle level government officials e.g. ward administrators in budget and open contracting as well as community groups representing marginalized and socially excluded groups like women, youth and PLWDs.

4

Support advocacy actions for representation of PLWDs and other public interest groups in county committees and boards on emergency funds.

5

Support counties to develop citizen engagement platforms that will provide a framework to accelerate the public's resolution of complaints and implement civic education campaign to sensitize the public on the existence and use of the platforms.

6

O4C19 project should lobby national and county governments to create inclusive and safe (from surveillance, repression, censorship and online harassment) avenues for online citizen engagement and feedback, ensuring that public officials reach out to those most at risk and those most likely to be excluded and ensure that they are engaged and able to participate in public affairs on an equal basis.

7

Support innovative CSO driven civic engagement interventions to inspire citizens to participate in public affairs and address barriers that hinder citizens from effectively participating in governance. E.g. civic education to address citizen apathy; advocacy for institutionalization of platforms and channels to engage leadership; proper planning of events and forums for citizen engagement; improved information availability and channels to disseminate such information.

8

The O4C19 project should consider supporting interventions around providing civic information through social media platforms due to their popularity. These platforms also present an opportunity for intermediaries to integrate functions that will enhance citizen engagement, such as online feedback and monitoring systems that enable participatory budgeting, transparency and public participation.

9

The O4C19 project should work with PPRA on:

- The development of guidelines for retroactive procurement approval undertaken to deal with emergency need under section 69 of the Public Procurement and Disposal Act. During key informants interview with PPRA, the team indicated that PPRA would be open to engaging in this area
- The development of guidelines for direct procurement for urgent needs or emergency procurement under section 103 of the Public Procurement and Disposal Act. During key informants interview with PPRA, the team indicated that PPRA would be open to engaging in this area
- Inclusion in the PPIP information on technical and financial capacity of the awarded bidders, current market price of specific goods, works and services
- Inclusion of county procurement plan for public access in the PPIP

10

The O4C19 project should design and undertake capacity development and sensitization of counties that have not integrated procurement reporting in the PPIP to register and upload procurement information in the PPIP as required by the law

11

The O4C19 project could engage and support counties with capacity building and sensitization of counties to upload all budgets and related instruments in their websites, and to continuously update them

12

The O4C19 project could engage and support counties with capacity building and sensitization of counties to prepare and upload citizen budgets so as to enhance citizen participation in the budget oversight and monitoring

13

O4C19 Project should provide technical assistance to selected counties to strengthen implementation of the emergency open contracting, including the development of a public-facing web portal based on Open Contracting Data Standard (OCDS). Specifically, partner with Nandi and or Vihiga counties to develop capacity of staff – procurement staff and technical staff to understand open government. Also, partner with Makueni County to support the enactment of the County Open Contracting Bill, 2020 and the Open Contracting Policy. In addition, support capacity development of stakeholders involved in emergency contracting, specifically how to deal with emergencies. Support civic education and awareness on budget process. Partner with Elgeyo County executive to create awareness on the new OC portal. This will include training the public, civil society, ward development committees, leadership of county assemblies

14

Support counties to develop citizen engagement platforms that will provide a framework to accelerate the public's resolution of complaints and implement civic education campaign to sensitize the public on the existence and use of the platforms.

15

Design an advocacy campaign for strengthening publication of information on COVID-19 related funds allocations and utilization. Specific campaign actions on legal reform should consider advocacy for enactment and implementation of the following laws and regulations:

- a. Partner with PPRA to develop specific regulations on how to conduct emergency contracting and procurement as well as fast track integration of PPIP with Open Contracting portals in the County Governments.
- b. Develop specific regulations on how to make supplementary budget making more open to the public. Currently there is no law that compels these budgets to be subjected to public participation particularly during emergencies.
- c. The enactment of Access To Information (General) Regulations, 2021 (currently at public participation stage) with provisions on what information needs to be published during emergency
- d. Amend existing laws to make recommendations of the CAJ binding so that court action can ensue where public officials do not comply with the ATI laws
- e. Enact national Public Participation law to institutionalize citizen engagement process at all levels
- f. Enact The County Oversight and Accountability Bill, 2021- to provide mechanisms on how public participation and oversight over the County budgets can be carried out.
- g. Petition Parliament to amend Section 23 (2) (3) (4) & (5) of the Access to Information Act to align with remedies provided under section 42 (4) of the Commission on Administrative Justice Act (CAJA), the remedies where there has been non-compliance with the recommendations of the CAJ

16

Develop capacity building programme in collaboration with CAJ on access to information: across governments, most institutions have some basic infrastructure to enable access to information. However, there is need for further investment in the institutional set up and infrastructure on access to information to ensure adequate personnel that is trained (e.g. on complaints handling, culture, legal) and well equipped with information systems.

17

Develop the capacity of infomediaries at county level in advocacy and networking, monitoring and oversight of COVID 19 funds.

18

Further research is recommended:

- a. To better understand Budget timelines within the PFM system specifically analyzing the impact of the law on reporting cycles by both national and county governments;
- b. To better understand the COVID 19 budget allocation criteria; and the funding landscape for social protection programmes.
- c. To better understand the impact of preference and reservations policy during the COVID 19 pandemic on youth and persons living with disabilities, and women

Counties:**19**

Counties should formulate regulations under Emergency/Disaster Acts to provide for guidelines for establishment of community oversight mechanisms at the ward and village level to oversight the County Emergency Funds. This will ensure community engagement, transparency and accountability. Where counties have established COVID 19 Response Fund Board e.g. Taita Taveta and Turkana, The Board of the Fund should include oversight institutions such as the Office of the Senate, Women Representative, Civil Society and Private Sector and allow for the co-option of other members.

20

Counties should formulate county specific guidelines on emergency contracting

21

Counties should amend their respective laws to provide for generation and proactive disclosure in open data formats of both financial and non-financial reports. The non-financial reports should be linked with the financial and provide for key programme milestones and outcomes achieved in regard to the COVID 19 Pandemic response and recovery. These reports should be published for public scrutiny.

22

Enact access to information laws and guideline/regulations. For Kwale and Embu counties, the research finds that there is need to amend the powers the CAJ under the legislations to be in line with the current law and develop regulations to facilitate citizens' access to information.

23

Publish PFM documents

24

Counties (and other contracting authorities) should ensure the continuity of procurement procedures. While normal procurement requirements may be waived for emergency contracting, it remains essential that contracting authorities keep detailed records of why they were justified in using the extreme urgency exceptions. The complete data on emergency contracts including supplier information, BO, contracts and terms, payments, and reports on receipts and implementation etc. should be published in full to ensure public accountability.

25**National Treasury:**

Procurement: Develop regulations on direct procurement under emergency or urgent circumstances to guide the procuring entities with further information so as to enhance transparency in the process. Specifically; regulations to stipulate the maximum duration where the use of direct method would be in place before an issue ceases to be urgent to allow for open tendering procurement method to be adopted; Regulations to expound Section 69 of the PPDA on retrospective approvals to specify for instance the inspection process, payment processes during urgent procurement process; Regulations on how to handle unsolicited bids during emergency procurement to cover circumstances where suppliers are not invited but express desire to supply. Currently the procedure for direct procurement only recognises the issuance of a tender document as the basis of invitation to apply and subsequent negotiations with supplier; as well as Regulations on how to apply multiple awards with regard to one item from multiple suppliers.

RECOMMENDATIONS

26

PFM: amend regulation 6 and/or include a specific regulation under the Public Finance Management (National Government) Regulations, 2015 to provide for public participation during emergency / supplementary budget making process to ensure more openness and accountability.

27

Parliament:

Access to Information Act: Parliament should review the exceptions in the Act to make them limited and specific. Exceptions should only apply when set out in law and protect only limited legitimate interests; and only where disclosure would pose a risk of harm to a protected interest.

28

In order to strengthen the enforcement powers of the CAJ, parliament should amend the constitution to expressly grant the CAJ order-making power. The order making power is important as it will give the CAJ greater authority to ensure public entities do not abuse the exemptions in Act; Also, it will reduce the redundancy of having two levels(CAJ and Parliament) of review of the same decision, which can result in more timely access to information; and provide finality for requesters because orders of the CAJ will be binding unless reviewed by the Court.

29

Lack of coherence is legislative making process: Currently, there are three parallel processes by the National Assembly and Senate on emergency and disaster law making process as well as on public participation where there are two separate bills before Senate and National Assembly. There is need for a joint up process amalgamate the Bills as the objectives are similar and develop a common legislative development process.



6.0 Appendices

6.1 List of key informants

Non-Governmental Organizations:

1. Transparency International Kenya
2. Katiba Institute
3. NAMATI
4. Article 19
5. International Budget Partnership
6. The Institute of Social Accountability
7. ECONews
8. International Commission of Jurists
9. Local Development Research Institute
10. Nubian Rights Forum
11. Mzalendo
12. Uraia
13. Hivos
14. Development Gateway

Oversight Agencies and Independent Commissions:

15. Public Procurement Regulatory Authority
16. Commission on Administrative Justice
17. National Gender and Equality Commission

Counties:

18. County government of Elgeyo Marakwet
19. County government of Nandi
20. County Government of Vihiga
21. County Government of Turkana
22. County Government of Garissa
23. County Government of Makueni
24. County Assembly of Nyandarua


Bilateral agencies:

25. GIZ
26. Embassy of Netherlands

(Footnotes)

- 1 The county reported on award of contract for installation of oxygen gas plant.
- 2 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting
- 3 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting
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- 6 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting
- 7 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 8 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting. It is notable that the procurement plan was prepared departmental level.
- 9 The Debt Management Plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 10 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting.
- 11 The procurement plan available is for 2018/19 FY. Nevertheless, it is a good indicator of accountability and transparency in public finance management and open contracting
- 12 Citizen engagement is the interaction between citizens and government during decision making, policy and development processes
- 13 KNBS (2021). Economic Survey, 2021. Available at: <https://www.knbs.or.ke/wp-content/uploads/2021/09/Economic-Survey-2021.pdf>
- 14 <https://datareportal.com/reports/digital-2021-kenya>
- 15 International Budget Partnership (2019). Open Budget Survey 2019: Kenya. Available at: <https://www.internationalbudget.org/open-budget-survey/country-results/2019/kenya>
- 16 Open Government Partnership (2021). Independent Reporting Mechanism (IRM): Kenya Design Report 2018–2020. Available at: <https://www.opengovpartnership.org/documents/kenya-design-report-2018-2020/>
- 17 William G. Smith, Does Gender Influence Online Survey Participation? June, 2008, <https://files.eric.ed.gov/fulltext/ED501717.pdf>
- 18 <https://kenyanwallstreet.com/census-2019-datashows-kenya-has-a-youthful-rural-population/>
- 19 The IEA has trained 150 CSO's in 9 counties of Busia, Baringo, Kitui, Homa Bay, Tharaka Nithi, Siaya, Nairobi, Narok and Mombasa. Additionally 25 national level CSOS were trained on use of OAG reports under the DAI-DDP Project of Increasing the Utilization of the Auditor General Reports by CSOs for Enhanced Accountability.

Hivos and Development Gateway have trained the following personnel from Makueni County Government on public procurement and Open Contracting; 45 senior officials(H.E Governor, Deputy Governor, their Offices, Cabinet and Heads of Departments), 23 technical and procurement officials, 30CECs and Chief Officers and 27 directors
- 21 IEA has trained 90 MCA's from 9 counties of Busia, Baringo, Kitui, Homa Bay, Tharaka Nithi, Siaya, Nairobi, Narok and Mombasa on oversight and auditing and Held a meeting with 20 Members of PAC & PIC of the National Assembly on implementation of OAG Reports

A woman with a determined expression stands in a dusty, outdoor setting, likely a slum. She is wearing a blue and white patterned headscarf, a white lace top, and a black and white floral skirt. She holds a large white sign with handwritten text. The background shows simple buildings and a clear sky.

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Corruption
together

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